

MEMORIAL ²⁶⁶¹

F O R

¹³ ARCHIBALD DOUGLAS of Douglas, Esq;
and for MARGARET Dutchess of Douglas,
and CHARLES Duke of Queensberry and
Dover, his Curators, Defenders ;

A G A I N S T

GEORGE-JAMES Duke of Hamilton, Lord DOUGLAS
HAMILTON, and their Tutors, and Sir HEW
DALRYMPLE of Northberwick, Baronet, Pursuers.

Contester à un citoyen l'état dont il a toujours été en possession,
qu'il a trouvé établi par les titres de sa filiation, qu'une longue
suite d'actes, que des reconnoissances réitérées à chaque in-
stant de sa vie, et qu'une possession publique et non inter-
rumpue de ce même état, ont confirmé, c'est une action tou-
jours odieuse, qui porte le trouble dans les familles, et qui par
la contagion de l'exemple peut devenir funeste à la société.

COCHIN, Tom. I. P. 573.

M. DCC. LXVI.

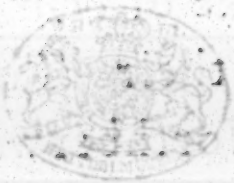
MEMORIAL

FOR

ALFRED DOUGLAS OF DOUGLAS,
and CHARLES DOUGLAS OF DOUGLAS,
Dover, his County, Delaware;

A CASE

George W. Davis & Co. v. Alfred Douglas
and Charles Douglas
Dated this 1st day of June 1881



CHANCERY COURT

IN EQUITY

1881

IN DOCKET

E R R A T A

Page.

8. Line 7- for *iriritrievable*, read *irretrievable*.
16. For 1007, *C.* read *G.*
18. For 417, *E.* read 428, *D.*
40. For 428, *D.* read 417, *E.*
29. For *nor*, read *not*, line 34.
85. For *about*, read *above*, 18 line.
93. For *has*, read *have*, 17 line.
126. Take out the first reference, 1053.
168. For *possibly*, read *positively*, 1st line.
169. For *Purs. pr.* read *Decl.* second reference.
184. Last reference, for 42, read 452.
191. For *is is*, read *it is*, 16th line.
220. For *case*, read *cause*, 3d line from foot.
224. For *favour*, read *stroke*, 30th line.
227. For page 14, reference, read p. 4.
236. For 516, read 616, first reference.
241. The second reference, for *Purs. pr.* read *Def. pr.*
289. For 880, *E.* read 865, *E.*
290. For 833, *H.* read 853, *H.* second reference.
301. Second reference *414*.
305. For *the time of day rules come*, read *when the time of day rules come*, 16th line.
305. For *very*, read *ever*, 28th line.
329. For 373, *E.* read 374, *E.* first reference.
339. For *Def. pr.* read *Purs. pr.*
340. For 579, read 519.
341. For *last*, read *least*, 16th line.
348. 20th line, for *regard for me*, read *regard for her and me*.
350. For 747, read 741.
358. Delete word *in*, first word, 21st line.
369. The word *however* to be delete, 12th line from foot.
386. For *drawn und*, read *drawn out*, 34th line.
444. For *she gave*, read *they gave*, 12th line.
447. For 2d July, read 22d July, 21st line.
452. For *above six foot*, read *about six foot*, 8th line from the bottom.
457. Line 27, for *interrogate*, read *interrogated*.
461. For *swaddling-cloaths*, read *swaddling-cloth*, in the 3d line from the foot, of the note subjoined.
462. For 855, second reference, read 743, *D.*
462. For 143, third reference, read 138, *L.*
489. Second reference, *Def. pr.*
490. For *Def. pr.* read *Purs. pr.*
491. First reference, *Purs. pr.* second reference, *Def. pr.*
496. For 717, read 727.
502. Last reference, for 518, read 519.
505. For 767, *I.* read 768, *B.*
507. For 149, *F.* read 119, *F.* first reference.
514. For *provision*, read *living*, 6th line.
516. Delete the word *too*, 24th line.

ATTRA

1. The first part of the book is devoted to a general introduction to the subject of the book. It contains a chapter on the history of the subject, a chapter on the scope of the subject, and a chapter on the method of the book. The second part of the book is devoted to a detailed treatment of the subject. It contains a chapter on the theory of the subject, a chapter on the practice of the subject, and a chapter on the application of the subject. The third part of the book is devoted to a summary of the results of the book. It contains a chapter on the conclusions of the book, a chapter on the suggestions of the book, and a chapter on the bibliography of the book.

SEPTEMBER 27, 1766.

MEMORIAL

FOR

ARCHIBALD DOUGLAS of Douglas, Esquire,
and his Curators.

THE action maintained by the tutors of the Duke of Hamilton, against the only remaining heir of the noble family of Douglas, has been heard of in most parts of Europe, and is, indeed, in its nature, interesting and singular.

Eighteen years have expired since the memorialist was produced to the world as the son of honourable parents.—His father, a gentleman of good reputation, well descended, and next heir, by entail, to a considerable estate, which he afterwards enjoyed.—His mother, a lady of high birth and education, accomplished in her mind, handsome in her person, amiable in her manners, presumptive heiress of a very ancient and illustrious family.—By these persons, he was acknowledged and treated as their child, a name given to him as such, upon the solemn occasion of baptism, the fact never doubted in the country where it happened, and the circumstances of the birth at last ascertained by direct evidence, before an intelligent jury, and confirmed by their verdict.

Yet an attempt is seriously made to divest him of that character which he sustains, to deprive him of a state which he has uniformly possessed, to establish by circumstances and suspicions, that the evidence formerly given in his favour was erroneous, that a variety of
persons

persons concerned in these former proofs and acknowledgments, however respectable in their characters, were guilty of falsehood, perjury, and other infamous crimes, and, in a word, to have it found and declared, that the memorialist is not the son of those who have been proved to be his parents, but a feigned and supposititious person, no way connected with the family into which he has been assumed.

Such is the general scope and tendency of an action, to support which the most uncommon endeavours have been used, and steps the most unprecedented have been taken.—In size and length of proof it exceeds any thing of the kind that was ever known. Five weeks were lately employed in stating this proof to your Lordships by council, and, in obedience to an order of the court, the arguments and facts are now to be arranged in memorials.

FACTS AN-
TECEDENT
TO THE
PROCESS.

About the middle of the last century, a younger son of William Marquis of Douglas was married to Anne Dutchess and heiress of Hamilton, and of that marriage the present Duke of Hamilton is descended.

By the original investitures of the family, both estate and dignity were descendible to heirs-general.—At an after period, the succession stood devised to heirs-male, but this happened from a particular reason, and continued only for a short time.—By a deed in 1699, heirs-female were again called to the succession.

James Marquis of Douglas died in 1700, leaving issue Archibald late Duke of Douglas, and Lady Jane Douglas, both then infants.—The Duke was born in 1694, and Lady Jane in March 1698.

Lady Jane was brought up by her mother, the Marchioness, in principles of the strictest piety, which she always retained.—Her great beauty and accomplishments procured her universal attention, and an alliance so honourable was courted by persons of the first rank and fortune in this kingdom.—An incident however happened at an early period in her life, which is now unjustly taken hold of to her prejudice, though her conduct was vindicated at the time, and was indeed the effect only of high spirit and perhaps uncommon sensibility.—She had been prevailed on to listen to the addresses of a nobleman of distinguished rank, who solicited her in marriage. Every thing was settled by their mutual friends, and the match ready to be concluded, when Lady Jane, who then happened to be in London, was surprised one day at having her chair stopped, when going to court, by a person unknown, who delivered her a letter, wrote in the name of her supposed lover, signifying that he was under engagements to another lady, whom he had long been fond of, and without whom

he

he could not be happy. It would have been a singular instance of philosophy in a young lady of her high fashion, and so much accustomed to admiration, had she submitted with patience to so cruel an affront. Lady Jane figured to herself, that an adventure of this kind would soon be in the mouths of the world, and that she would be exposed to ridicule and contempt. Full of this idea, she resolved to abandon for ever a country in which she imagined she could no longer pass her days with comfort; and having set out privately, and in disguise, in order to prevent discovery, attended only by her maid, who was a French-woman, she went over to France, with a determined purpose of shutting herself up in a convent.—Her mother, the Marchioness, soon followed, and came up with her before her intentions were fully compleated.—The Duke, after avenging the insult which had been offered to his family, by fighting the supposed author of it, went also to France in quest of his sister, and prevailed with her to forget what had happened, and to return to her native country.

The Duke, both before and after this period, appears to have entertained a very high regard for his sister, which he expressed by executing settlements and deeds in her favour at different times—In 1718, ^{Def. pr. 1002, A, B. 896, A, B.} her provision being very small, he granted her a bond for 30,000 merks; he named her his sole executrix; and he granted procuratory for resigning his estate of Dundee or Dudhope, in favour of a certain series of heirs, whereof Lady Jane was the first institute.—He even made destinations of his whole estate in her favour, failing heirs of his body.—He increased the interest of her provision to 300l. by bond of annuity; and he declared, that, in case of her marriage, he would put her in possession of the estate of Dundee, and make other suitable provisions upon her.

About the 1725 the Duke was suspected of having committed a rash action, which made it necessary for him to live in retirement; and, from that period, for many years, he continued to lead a solitary life in the castle of Douglas, where few people had access to him, and where he became a prey to designing and interested persons. Lady Jane lived in Edinburgh with her mother the Marchioness, and seldom had occasion to meet with her brother.—In 1738 (the Marchioness being then dead) an incident happened which produced a misunderstanding between them.—The Duke, in a fit of passion, had beat one of his dependants; and, as this made a noise in the country, and revived in some degree the former story then almost forgot, it was given out and believed, that an information had been lodged against him to government.—Lady Jane heard soon after, that he had thoughts of leaving his retirement to pay a visit in Edinburgh.—She wrote to him by express, begging him to delay his journey, and signifying an apprehension

sion that he might be put to trouble if he appeared in publick at that time.—This letter, though well intended, gave offence to the Duke.—He prosecuted his journey to Edinburgh, but by an accident did not meet with his sister; and he returned to the country very much dissatisfied with her.

Purf. pr.
331, H.

About this time a person, called White of Stockbrigs, had insinuated himself into the confidence of the Duke, and acquired remarkable influence over him.—He lived with him in the castle of Douglas, and continued for many years to be his sole adviser and favourite.—This was an unlucky connexion both for the Duke and Lady Jane, as it was for the interest of Stockbrigs, that the Duke's relations and friends should be kept at a distance from him. In 1744 the Duke revoked the settlements he had made in 1718; but, during the life of Lady Jane, he never executed any new deed; and he continued to correspond with her, and to pay her the annuity of 300 l. as usual.

Def. pr.
412, D.

Lady Jane had often, when in favour with her brother, and subsequent to her return from abroad, as above noticed, been pressed by him to marry. Addresses were made to her by several noble Lords, but they proved ineffectual, for reasons unnecessary to be mentioned.

In 1746, being in the forty-seventh year of her age, she listened to the proposals of John Stewart Esquire, afterwards Sir John Stewart of Grandtully Baronet, and was privately married to him, at her house near Edinburgh, on the 4th August that year. Sir John was possessed of no fortune at the time, though he had a considerable one in expectancy.—His elder brother Sir George was far advanced in life, had no issue, and was in a very declining state of health.—Sir John had formerly been married to a daughter of the honourable Sir James Mackenzie of Royston, one of the Judges of the Court of Session, by whom he had a son, now Sir John Stewart of Grandtully.

Lady Jane had no other funds than the annuity of 300 l. allowed her by the Duke, and, from the scantiness of her own and her mother's provisions, she had been obliged to run considerably in arrear.—She was afraid to communicate her marriage to the Duke, upon account of the difference which then subsisted between them.—Her husband and she therefore resolved to keep the marriage private; and, as this could not easily be done, if they continued to live in Scotland, they set out immediately after the marriage, and having embarked at Harwich, passed over into Holland in September 1746, and took up their residence for some months at the Hague.—In this expedition they were attended by Mrs. Helen Hewit, a maiden gentlewoman, who had for many years lived with the Marchioness, and afterwards with Lady Jane, in quality of a companion, and two-maid-servants, Isobel Waller and Ephie Caw.

Their

Their first intention when they landed in Holland, was to proceed ^{Purf. pr.} for Aix-la-Chapelle, where they proposed to reside for the benefit of ^{31, L 32, 34r} the waters; but as that country was then the seat of war, and they were afraid of being plundered by the way, it appears, that, while at the Hague, they so far altered their scheme as to make application for a pass to go to the waters of Bourbon in France; but finding this impossible to be obtained, they gave up all thoughts of going into France, returned to their former scheme of going to Aix in the spring, and, in the mean time, towards the end of December, they set out for Utrecht, where they passed the winter.

In April 1747 they proceeded for Aix-la-Chapelle, where they resided constantly till the 21st May 1748, excepting a few weeks that they were at Spaw in August 1747.

During all this time Sir John and Lady Jane lived together in family, but, from the same motives which had originally determined them to conceal the marriage, viz. the lowness of their circumstances, and the fear of disobliging the Duke, they persisted for some time in keeping it a profound secret to all, except the servant-maids, and one or two others, from whom it was impossible to conceal it.—An incident however happened, which necessarily occasioned a much earlier discovery of the secret than was intended.—Towards the end of the year 1747, Lady Jane was perceived to be with child.—The symptoms of it were discovered by Mrs. Tewis the land-lady, the servants of the house, and others who had access to be near her person.—There was a necessity therefore of revealing the marriage to them, as well as to Lord Crawford, then residing at Aix-la-Chapelle, and some others, who were most intimate with Lady Jane.—At the same time she still continued to pass by her own name, and neither the marriage nor pregnancy were publicly owned.—The reason of this was obvious, they could not afford the additional expence, which a declaration of the marriage would have occasioned; and besides, as Lady Jane was naturally shy and of a reserved disposition, she inclined to conceal her situation as long as possible.

The progress, however, and evident marks of her pregnancy, were distinctly observed by a variety of persons at Aix-la-Chapelle, and she at last found herself under a necessity of notifying her change of state, and consequences of it, to her brother the Duke. This she did by a letter to his Grace, which appears to have been wrote in April 1748, and transmitted to him inclosed in one from Lord Crawford. Lady Jane's letter has not been recovered, but a copy of Lord Crawford's is in process, and is in these words:

“My

April 1748.

Def. pr.
963. E.

" My dear Duke,

" Having had the honour in my younger days to be favoured with
 " your Grace's friendship, which I have ever since flattered myself
 " you have continued me, as I am conscious no relation of your
 " Grace's family wishes it better, or prides himself more in the con-
 " nexion they have with it; and as it has providentially been my
 " fate to pass these six last months, confined to a place where the ri-
 " retrievable misfortunes it has pleased the Almighty to afflict me
 " with, could only be rendered supportable to me, by the most agree-
 " able society of so deserving people, as that of your sister Lady Jane
 " and Mr. Stewart; and, as during the space of time we have been
 " together, I have, from a regard I have for your Grace's family,
 " I cannot conceal, so far merited my Lady Jane's confidence, as to
 " be entrusted with the alteration there has happened in her state of
 " life, as also the notifying of it to your Grace by the inclosed, a
 " service, that the same regard I have mentioned, I ever shall have
 " for your family, has even prompted me to offer, on so important an
 " occasion, recommending with the greatest earnestness, all its conse-
 " quences to your Grace's most mature deliberation. I say, as my
 " undertaking proceeds from the most warm affection to your Grace's
 " family, I am hopeful, my representations will not only meet with
 " forgiveness, but with also their wished-for success, in reconciling
 " your Grace to an event, all the well-wishers of your Grace's family
 " may have the greatest reason to rejoice at, as there is such visible
 " hopes of its being attended with the natural consequences, so much
 " longed for, by all that are fond of seeing the family of Douglas mul-
 " tiply. And since I have thus far ventured upon my dear Duke's
 " goodness, he must forgive me if I proceed a little further, and re-
 " present, that a sister, tenderly fond of your Grace as she is, and
 " in the situation my Lady Jane is in at present, a favourable answer
 " from your Grace is more necessary, than may be at first perhaps
 " adverted to; wherefore, allow me once more to entreat you will,
 " neither by silence nor indifference, hazard the bad consequences that
 " may follow either the one or the other. I can assure your Grace
 " she does great honour to her family wherever she appears, and is
 " respected and beloved by all that have the honour of her acquaint-
 " tance. She certainly merits all the affectionate marks of an only
 " brother to an only sister; much, much does she wish, as well as o-
 " thers of your Grace's devoted friends, there had been no so great
 " necessity for her changing her way of life, but since it has become
 " so absolutely necessary, with the greatest submission, considering the
 " variety of different circumstances, I would gladly hope your Grace
 " will not disapprove of the person Lady Jane has chose, as to be
 " sure

" sure there is none more deserving.—But I'm afraid I shall encroach too long upon your Grace's patience; so I shall only add, that your Grace's rendering Lady Jane satisfied and happy, by a reconciliation, and such other marks of your brotherly affection as shall seem proper, shall ever render me unalterably, your Grace's most devoted relation, friend, and humble servant,

(Signed) Crawford."

A postscript is subjoined about the operations of the army, which the memorialist will have occasion hereafter to appeal to.

Lady Jane and Mrs. Hewit also wrote of the marriage and pregnancy to some other friends in this country, particularly to Mr. Douglas of Edrington. Purf. pr.
372, K.
298, B, D.

The great resort of company, and increase in the expence of living, occasioned by the congress then held at Aix-la-Chapelle, determined Lady Jane to seek out another place for her in-lying, and for the residence of her family.—To cross the sea, and return homeward, in her then situation, would have been inconvenient and hazardous.—To settle in France they could have no scheme, as the peace had not yet taken place, and they had already been refused passports to go into that country, on account of the war.—The scheme therefore which they appear to have fixed on, was to go to Geneva, or some other part of Switzerland, which, besides being represented to them as less expensive than the place they were in, had the advantage of being a Protestant country.—Accordingly they made application for a passport to go thro' Luxemburg and France to Geneva, which, after a good deal of difficulty, they obtained, but not till Lady Jane was far advanced in her pregnancy.—For this reason it appears, that, towards the beginning of May, a variation in their plan was for some days thought of, which was to delay their journey southward till after the in-lying, and in the mean time to apply for the use of a chateau, called Bedbur, belonging to the Count de Salme, within nine leagues of Aix-la-Chapelle, and in the neighbourhood of a town of the same name, where there was a surgeon and a midwife.—This chateau Mrs. Tewis undertook to procure for them, by the means of her cousin, Joseph Tewis, grand bailiff of the Count de Salme.—Joseph Tewis was accordingly applied to; but he did not incline to grant the request, without writing to the Count himself, who lived at Vienna.—A letter could not be had from the Count in course of post in less than three weeks.—Sir John would not consent to their waiting so long in suspense, and what probably determined them to proceed on their original plan was, that the preliminaries being by that time signed, and acceded to

to by all parties, they thought they might have it in their power, if they saw occasion, to stop at any town in France, or elsewhere, by the way.

Accordingly they set out on the 22d of May, upon their intended rout, and it appears that, about the time of their setting out, or some days before, they formed the design of making some stay at Reims in Champagne.

On their way they rested a few days at Liege, where Lady Jane was seen by fundry persons of her own country, who observed her pregnancy, and have given the strongest evidence of it.

At Sedan they also rested about nine days, and on the 7th of June they arrived at Reims, where they proposed to settle for some time, and where Lady Jane's being with child, and very far advanced, was extremely visible.

Here Lady Jane would in all probability have been delivered, had not Sir John and she been told that the midwives at Reims were not extremely skilful.—This seems to have determined them to go to Paris, where the ablest assistance might be had, in case of necessity. At the same time, as their residence in Paris was to be no longer, than till Lady Jane should recover from child-bed, it was unnecessary to be at the expence of carrying along with them their whole family and baggage.—The servant-maids were left at Reims, and Lady Jane, Sir John, and Mrs. Hewit, set out on the 2d July, in the publick voiture, or stage-coach, which was the easiest, and indeed the only, method of conveyance they could possibly procure.

In Paris, they first took up their quarters at an inn, called The Hotel de Chalons, belonging to one Godfroy ; from that they went to a more private house, in the Fauxbourg St. Germain, possessed by a woman called La Brun, where Lady Jane was brought-to-bed, on the 10th July, of the defendant and his twin-brother.—Afterwards, they found it necessary, about the 19th or 20th July, to leave this house and to take up their lodging in the Hotel d'Anjou, kept by Michelle a wigmaker, where they remained till they left Paris, about the 3d or 4th of August. From Paris they went to the village of Dammartin, for the benefit of fresh air ; and Lady Jane having recovered strength, they set out for Reims upon the 14th of August.

The defendant, being the eldest twin, and a strong healthy child, they brought along with them to Reims, where he was baptized in regular form. The other, having come into the world in a weak and sickly condition, was left at nurse, in the neighbourhood of Paris, under the inspection of Mr. La Marre, the man-midwife, who thought it necessary, as soon as he was born, to baptize or *ondoye* him, according to the form practised in the like cases by the midwives and accoucheurs

coucheurs in France.—While at Reims, Lady Jane became again with child, and miscarried.—These particulars of the delivery, and other matters relative thereto, will be more fully treated of in the sequel.

Lady Jane thought it her duty to acquaint the Duke of the birth of her children, as she had done of her marriage and pregnancy. But it would appear, that means were used with the Duke to turn this event to her prejudice.—He was offended at the marriage; he made no answer to any of her letters; and he was even prevailed on to listen to certain very injurious surmises which arose in this country against her.

The Duke, however, still continued the payment of his sister's annuity, till an arrestment having been laid in his hands by one of her creditors, in July 1749, he gave orders to stop it, whereby she and her family were reduced, for some time, to the greatest want. A loan of 350 l. obtained from the Earl of Morton, enabled her to return to this country with her family. This money she received at Reims in the beginning of November 1749, immediately after which, she and her husband, and Mrs. Hewit, set out for Paris, and having brought their youngest child Sholto from the nurse, who had the care of him, they left Reims in their way to England, on the 29th of that month, and arrived in London about the end of December.

Some time after their arrival in England, the youngest twin, who had only been ondoied by the man-midwife, was formally baptized by a clergyman, in presence of the Countess of Wigton and others.—Both the children were presented by them to their friends, and invariably given out, and treated by them, as the real issue of Lady Jane Douglas.

But the misfortunes of Lady Jane were not at an end on her return to her own country. Sir John had formerly contracted debts, and the necessary support of his family, after coming to England, gave occasion to more;—he was distressed by his creditors, and Lady Jane and her family were reduced to a most destitute condition, till, in consequence of an application made in her behalf, she was in part relieved by the bounty of his late Majesty, who was graciously pleased to bestow on her a pension of 300 l. per annum. The letter wrote by Lady Jane to Mr. Pelham, on that occasion, shews her situation at the time, and affords a specimen of that elegance and good sense, for which she was distinguished.

“ Sir, if I meant to importune you, I should ill deserve the generous
 “ compassion which, I was informed, some months ago, you expressed
 “ upon being acquainted with my distress. I take this as the least
 “ troublesome way of thanking you, and desiring you to lay my ap-
 “ plication

Pur. pr. 532.

Def. pr. 96r,
D.May 15,
1750.

Def. pr. 970.

“ plication before the King in such a light as your own humanity will
 “ suggest. I cannot tell my story, without seeming to complain of one
 “ of whom I never will complain. I am persuaded my brother wishes
 “ me well ; but, from a mistaken resentment, upon a creditor of mine
 “ demanding from him a trifling sum, he has stopt the annuity which
 “ he had always paid me.—My father having left me, his only younger
 “ child, in a manner unprovided for ; till the Duke of Douglas is set
 “ right, which I’m confident he will be, I am destitute. Presumptive
 “ heiress of a great estate and family, with two children, I want bread.
 “ Your own nobleness of mind will make you feel how much it costs
 “ me to beg, though from the King. My birth, and the attachment
 “ of my family, I flatter myself, his Majesty is not unacquainted
 “ with ; should he think me an object of his Royal bounty, my heart
 “ won’t suffer any bounds to be set to my gratitude ; and, give me
 “ leave to say, my spirit won’t suffer me to be burdensome to his Ma-
 “ jesty, longer than my cruel necessity compels me.

“ I little thought of ever being reduced to petition in this way ;
 “ your goodness will therefore excuse me, if I have mistaken the man-
 “ ner, or said any thing improper.

“ Though personally unknown to you, I rely upon your intercession,
 “ the consciousness of your own mind, in having done so good and
 “ charitable a deed, will be a better return than the perpetual thanks
 “ of, Sir, your most obliged, most faithful, and most obedient servant,

“ JANE DOUGLAS-STEWART.”

In a letter to Lord Morton, of a subsequent date, she writes as fol-
 lows :

December 22,

1750.

Def. pr. 976,
 E.

“ I have now the pleasure to acquaint your Lordship that his Maje-
 “ sty has been graciously pleased to appoint me three hundred pounds
 “ a-year, and Mr. Pelham, without my taking the liberty to desire it,
 “ was so extremely humane and good as to pay up an hundred and
 “ fifty of it before it became due, knowing my distressful situation.—
 “ I could not have been so far wanting in duty and gratitude to you,
 “ my Lord, as not to have informed you of this long ere now, but
 “ that I still expected from post to post an answer to my former let-
 “ ter, being deeply impressed, as I mentioned in my last, that what-
 “ ever good fortune has befallen me, is entirely owing to your Lord-
 “ ship’s great and uncommon goodness to me, else I should have
 “ been out of the way of receiving any.—Still at Reims, and there,
 “ long before this time, without credit, and in the most deplorable
 “ condition. Judge then, my Lord, what my sense of your goodness
 “ is, and what my gratitude ought to be—I’m sure my heart is full
 “ of

“ of it ; but I have not words to express the half of what I feel on
 “ this occasion.—My Lady Irwin, to whom I owe a thousand obliga-
 “ tions, and to whom I often speak my sentiments with regard to
 “ your Lordship, can, better than I am capable, acquaint you with
 “ what I cannot find expressions fit to represent to you myself. Her
 “ Ladyship, according to her continued favour for me, did me the ho-
 “ nour to introduce me last Friday to the King, who was graciously
 “ pleased to receive me with peculiar marks of good-will and kind-
 “ nefs. Lady Irwin, who is acquainted with courts, assured me that
 “ the greatest favourite could not have had a more favourable recep-
 “ tion, for which I shall ever retain a lasting gratitude. Next Sun-
 “ day I am to be introduced by her Ladyship to the Prince and Prin-
 “ cefs of Wales, and the Friday following, to the Duke and Princess
 “ Æmilia.”

They still however continued oppressed with debts, and had the greatest difficulties to struggle with.—Sir John was imprisoned by his creditors, and lived near three years within the rules of the King's Bench prison in Southwark.—Lady Jane took lodgings at Chelsea for her and her children ; and, at different times, was put to the necessity of selling her cloaths, and other effects, for the support of her family and of her husband. Letters passed between them almost every day, a great number of which have been accidentally preserved—they exhibit a most lively picture of their distresses at the time, and furnish an undoubted proof, not only of the regard which they entertained for each other, but of that genuine affection and sollicitude for their children, which real parents only can feel. The unaffected and careless stile in which the whole of these letters are wrote, shows that every sentiment contained in them proceeded from the heart ; and is likewise a certain proof that they were never intended for the perusal of the world.

In 1752, Lady Jane made a journey with her children to Scotland ; and as she had heard something of those malicious reports which had been carried to the ears of the Duke, she resolved to go with her children to the castle of Douglas, to learn from himself the nature of the charge exhibited by her enemies against her, and to endeavour, if possible, to revive in him the humanity of a brother. She accordingly repaired to Douglas-castle with her children ; and it is in proof, that she would have been admitted to the presence of her brother, and, in all probability, the misfortunes of her and her children would from that moment have ceased, had not her ever-watch-
 Def. pr. 898.
 B.
 Purf. pr. 313.
 A.
 ful enemy, White of Stockbrigs, interposed, and, after a private con-—374, E.
 ference with the Duke, issued an order to the servants to refuse her admittance.—Lady Jane passed that night in the town of Douglas, over-
 D
 whelmed

Def. pr. 971,
B.

whelmed with the deepest affliction; she wrote a letter to him from thence, conceived in terms the most pathetick, earnestly entreating to be admitted to his presence, in order that she might have an opportunity of clearing up her injured innocence.—“What (says she) must my sorrow be! and what an additional torment do I now feel, when in your house, with my children, come to throw ourselves at your feet, we are debarred access to your presence!—recall that cruel sentence, I beseech you, if you don’t intend to render me all my life miserable, and to shorten it too, which must be the case; for it is impossible to live any time with a load of such exquisite grief as mine is, &c.”—But it was to no purpose, and in all probability the letter went no farther than Stockbrigs.

Lady Jane some time after returned to London, leaving her children in this country under the inspection of Isobel Walker, and recommended to the care of some friends.

Service p. 63.

In May 1753, Sholto, the youngest twin, died of a fever; an event which threw Lady Jane into the deepest melancholy. She wrote of it to the Duke in the following terms: “Dear Brother, Though I am not so vain as to flatter myself, that any thing relating to me, either prosperous or adverse, can give the Duke of Douglas joy or grief; yet I think it my incumbent duty to inform him of any matter of consequence that befalls me.—Permit me then to acquaint your Grace, that Sholto-Thomas Stewart, my second boy, died on the 5th of this month of May, of an intermitting fever, after continuing in that illness seventeen days. It pleased Almighty God, in his infinite wise providence, to remove that comfort from me. God’s will be done. It has added, indeed, considerably to my grief, that I was absent from the child when he died, but I submit, without murmuring, to whatever God is pleased to order concerning me.—I wrote to your Grace when I was in Douglas-town, of my intention to set out for England, to seek out for a cheap place to live in, &c.”

Defender’s
pr. 994.

She came to Edinburgh soon after, in a very lingering state of health, and it appears that she made one other effort to be admitted to the Duke. Her letter, a copy of which is preserved, sets forth in very moving terms, the low state to which she was then reduced, and expresses the most ardent and earnest inclination to see her brother once more before her death. She concludes with these words: “I shall trouble you, dear brother, with no longer letter at present: I am indeed unable to write any more; only allow me to assure you, before I conclude, that I most earnestly and sincerely wish you all the blessings, both spiritual and temporal, that Heaven can bestow; that

" that you may be fully possessed of them, both here and hereafter, is
 " my constant prayer.—Adieu, dear brother, &c."

Whether any of these letters ever reached the Duke is uncertain. Lady Jane died in November that year, in a wretched apartment, where she had lodged for some time, destitute almost of the common necessaries of life.—In her dying moments she poured forth her blessings on her surviving son, and shewed the utmost anxiety and concern for his welfare, in presence of many witnesses.

A few days before her death, she had taken the sacrament in one of the churches of this city.—Her physician, in writing the accounts of her death to Sir John, uses these words: " She bore her sickness
 " with Christian patience and resignation, accompanied with that remarkable sweetness of temper, and affable behaviour, so natural to
 " her." A reverend and worthy clergyman, who had long been intimate with her, wrote also to Sir John on the same subject: " You
 " were," says he, " among the happiest of men, to be matched with
 " such a one, not only for her quality but qualifications: She excelled
 " the most of her sex. But, as she's gone, and shines no more in this
 " world, good reason we have to hope, she has made a happy change,
 " where all sorrow and sighing fly away. She bore her affliction with
 " great patience and resignation to the holy disposing will of God.
 " She had her noble spirit till near her very last."

Novemb. 21st,
 1753.
 Def. pr. 956,
 D.

Nov. 24th,
 1753.
 Def. pr. 957.

The deceased Lady Schaw had been intimately acquainted with Lady Jane, and, moved with compassion to see the child of her friend, and the heir of a noble family, left destitute, took him under her protection, and supported and educated him while she lived.—Upon the death of that Lady, whose memory he will ever revere, a noble Lord took him under his care, and continued his friendly assistance as long as it was necessary.

In 1759, Sir John Stewart, the memorialist's father, succeeded to the estate of Grandtully, by the death of his brother Sir George.—The two brothers had for many years lived at variance, which was the reason that Sir John, in the distresses he and his family were reduced to, had never been able to procure any relief from that quarter, though the estate of Grandtully, to which Sir John was next heir by entail, was above 1000*l.* *per annum* of rent.—The first act of Sir John's administration was granting a bond of provision for 50,000 merks to his son by Lady Jane Douglas, and this bond he lodged, for behalf of the memorialist, in the hands of William Loch, a gentleman who had been very friendly to Lady Jane in the latter part of her life.—Mr. Loch has deposed, that it was with the utmost difficulty he could withhold Sir John from granting
 bond for a much larger sum, which, he said, might be made effective.

Ser. p. 24. E.
 Purf. pr.
 360, D.

tual.

tual out of the woods upon the estate of Grandtully, and insisted, that it was his duty to provide the memorialist, not as a younger son of the family of Grandtully, but as the issue of his marriage with Lady Jane Douglas.

The Duke of Douglas's conduct, in refusing so obstinately to do justice to his sister, while she was in life, or to acknowledge her issue, may perhaps appear singular; but the reason of it is well known, and is sufficiently ascertained by the proof.—From the time that the Duke's dissatisfaction at his sister's marriage, and the birth of her children was known, and that it was supposed he himself would never marry, or have issue, his succession became an object of attention to those who were of his family, or connected with him. In particular, the agents of the family of Hamilton, assisted by Stockbrigs, who was gained over to their interest, became very busy in their endeavours, to procure settlements on the heir-male, and to impress the Duke with notions prejudicial to his sister.—Some extraordinary specimens of this kind appear from the evidence, and shall here shortly be noticed.

Mr. Archibald Stuart, then agent for the Duke of Douglas, had been much connected in friendship with Sir John Stewart; and it appears, that they corresponded together in a familiar stile, while Sir John and Lady Jane were at Reims. Mr. Stuart however became also employed in the business of the family of Hamilton, whose interests, in opposition to Lady Jane's, he thought proper very warmly to espouse. In 1752, when Lady Jane came to Scotland, she was still possessed of the procuratory of resignation of the estate of Dudhop, the bond of provision, and some of the other deeds above mentioned, which the Duke had executed in her favour. These writings the Duke was very desirous to have restored to him; and accordingly it appears, that Lady Jane, in compliance with her brother's desire, delivered them up to Mr. Archibald Stuart upon the 27th October that year. The inventory is in process, with Mr. Stuart's receipt subjoined, in these words: "I Archibald Stuart, writer to the signet, grant me to have
 " received from the right honourable Lady Jane Douglas-Stewart, the
 " whole writs in the above inventory, being five in number, in order
 " to be returned and delivered up to his Grace the Duke of Douglas,
 " her ladyship's brother. In witness whereof." &c. Lady Jane, no doubt, expected, that her brother was to have been made acquainted with the obedience which she had thus given to his commands, and that the papers would immediately have been carried to him. In place of this, your Lordships will observe what happened. The Duke was made to believe, that Lady Jane had refused to give up the writings. He was highly incensed at her for her conduct in that particular, and, at the very time that the writings were in the possession of his own agent,

Purs. pr. 522,
C.
Def. pr. 1007,
C.

Def. pr.
1002.

agent, Mr. Archibald Stuart, a process of exhibition and delivery was carried on before the Court of Session, in the name of the Duke, and decret recovered against her in absence, of date 1st August 1753, de-
 Def. pr. 1002, E.
 cerning her to deliver up “all and whatsoever deeds and writings,
 “made and granted by the Duke, or which may be anywise conceived
 “in favours of Lady Jane, his sister, of whatsoever nature or import
 “the same may be; and particularly, a disposition or procuratory of
 “resignation of the estate of Dudhope, granted by the Duke to and in
 “favours of his heirs of tailzie; and, more particularly, in favours of
 “Lady Jane, his sister, &c.” Another of the articles in this decret is
 in these words: “*Item*, any nomination or disposition granted by the
 “Duke to his sister, appointing her to succeed to him in all or any
 “part of the estates, heritable or moveable, which should pertain to
 “him at his death.” And another, in these words: “*Item*, a bond of
 “provision, granted by the Duke to his sister, for 30,000 merks.” In-
 Def. pr. 999, E.
 deed it appears, that Mr. Stuart kept these papers in his own custody,
 till he was called on to produce them, in the competition for the estate,
 after the Duke’s death.

In one of her letters to Mr. Hamilton, Minister of Douglas, of date 8th December 1752, Lady Jane gives the following account of her interview with Mr. Stuart, upon occasion of delivering up the papers.—“I must acquaint you (says she) with a pretty odd procedure
 Service, p. 41;
 D.
 “in Mr. Archibald Stuart. I gave him my papers to deliver to my
 “brother. Mr. Stuart received them from my hands with remark-
 “able transports of joy. A very strange demonstration to shew before
 “me, who must suffer so much in my interest by delivering them up.
 “But this is the time of my suffering all kind of distresses, even in-
 “fults too. Mr. Stuart promised, without my desiring it of him,
 “to use his warmest endeavours to persuade my brother to restore to
 “me the 30,000 merks, which he had formerly made me a present
 “of; which paper I gave up amongst the rest. He also assured me, he
 “would do all in his power to incline my brother to restore back the
 “300l. withheld these few years past. I thanked Mr. Stuart for
 “these fair promises, and desired him to press that matter no farther
 “than he could do it safely for himself, not to incur my brother’s dis-
 “pleasure by any act of friendship done to me—begged him to make
 “me a report how things went at his return from Douglas-castle.
 “But so far from complying with that just and reasonable request,
 “he has never once come near me, nor sent me a single line, though
 “I reposed so much trust in him as to give him my papers to deliver
 “to my brother, which I gave to Stuart on the 27th of October,
 “and now it is the 8th of December. I am not ready to suspect, or
 “to put bad constructions upon any person’s way of acting; but this
 E “conduct

“conduct of Stuart’s must occasion various thoughts. When I en-
 “quire what this gentleman is about, that occupies him so much,
 “that he does not find time to behave with common civility and de-
 “cency where it is due, the answer I receive is, he is constantly down
 “in the Abbey, consulting and contriving matters with the Duke of
 “Hamilton, &c.”

Def. pr. 417, E. But the great aim of Stockbrigs, and the other agents by whom
 the Duke was at that time environed, was to impress him with doubts
 concerning the birth of his sister’s children. One fact with great confi-
 dence asserted by them was, that Margaret Kerr, who had been servant
 to Lady Jane before she went abroad, insisted, from particular causes of
 knowledge, that Lady Jane could not possibly become pregnant, and
 “that a marble table might as soon have a child as she.”—A circum-
 stance which has since been disproved by the deposition of Margaret
 Kerr herself.

Purf. pr. 45 and 46. The much celebrated letter wrote to the Duke by a gentleman (now
 a noble Lord) affords another instance of the unjustifiable imposition
 then practised upon him.—It is proved to have been of the following
 Def. pr. 428, D. tenor: “My Lord, I saw Lord Hyndford lately, and told him the
 “conversation I had with your Grace, when last at Douglas-castle,
 “and that your Grace said you had no objections to leave your estate
 “to Lord Hyndford, only you was afraid he would wish you dead :
 “Lord Hyndford says, he wants no part of your estate but his supe-
 “riorities, and the presentation of the church, which he offers to pay
 “for. This is such a small favour, I do not see how your Grace can
 “refuse it, considering Lord Hyndford is your nearest relation, being
 “descended of the eldest daughter of the Marquis of Douglas, and
 “full blood with the Earl of Angus, your Grace’s grandfather, where-
 “as Duke Hamilton and the rest was only half-blood. Your Grace
 “may see by this, that Lord Hyndford is your heir-at-law, and will
 “undoubtedly succeed to all your personal estate, failing of Lady Jane
 “and her two fictitious children. A discovery of this imposition has
 “lately been made by the Countess of Stair. Your sister went there
 “with the two impostors : so soon as they entered the room, the
 “Countess called out, *Lady Jane, you cannot pass these boys upon the*
 “*world as twins, for one of them must be considerably older than the o-*
 “*ther.*—Your sister changed colours, but the Countess of Stair went
 “up briskly to the children, opened their mouths, and discovered by
 “their teeth that one of them was six months older than the other.—
 “Your sister proposes to go to London soon, and to take the boys
 “with her. It is thought they will die one of these days as Lady
 “Kinnaird’s did. I must entertain your Grace with this curious pro-
 “cess,

“ cess, which has been lately before the Commissaries. Lady Kin-
 “ naird, having a pique at her husband’s heir, gave it out that she
 “ was with child, and was afraid that she and her child would be in
 “ danger from the heir; so absconded for some time. At her return,
 “ told that she had been delivered of two sons: but the heir raised a
 “ process against her to produce the boys. Her Ladyship, finding
 “ that the plot would be discovered, was glad to give it under her
 “ hand that the children were dead.—My dearest Lord, I think it my
 “ duty to inform your Grace of every thing that may turn out to
 “ your advantage; and if ever you find me vary from the truth, be-
 “ lieve me to be a damn’d villain, &c.

This story Lady Stair herself had afterwards an opportunity of re-
 futing. Sir John Stewart of Castlemilk depones, “ That he had occa-
 sion to see Lady Stair some time before the Duke of Douglas’s death,
 “ but how long before it the deponent cannot well recollect; that he
 “ saw the said Countess of Stair in Duke Hamilton’s lodging in the
 “ Abbay, where the Duke of Douglas then lived. Depones, that there
 “ were in the room, the said Countess of Stair, the Dutchess of Dou-
 “ glas, Mrs. Hepburn the Dutchess’s sister, and some other person,
 “ whom the deponent cannot now recollect; and, after these persons
 “ had been some time together, the Duke of Douglas came into the
 “ room. Depones, that when the Duke came into the room, as afore-
 “ said, a conversation was going on between the Dutchess of Douglas
 “ and the Countess of Stair, touching Lady Jane Douglas and her
 “ children, when the Duke came in, and talked some time with Lady
 “ Stair, and soon after the deponent took his leave and left the room.
 “ Depones, that, some little time after the deponent came into the room
 “ as aforesaid, the Countess of Stair entered the room, and was seem-
 “ ingly in a very great passion; that she had in her hand a paper,
 “ which the deponent understood by the conversation to be a copy of
 “ a letter from Thomas Cochran, Esq; now Earl of Dundonald, to the
 “ Duke of Douglas, in which the said Thomas Cochran accused La-
 “ dy Jane Douglas, the Duke’s sister, of introducing fictitious chil-
 “ dren into the family of Douglas, and likewise affirmed, that the
 “ Countess of Stair should have said, that, to her knowledge, they were
 “ fictitious children; at which, as the deponent remembers, the Coun-
 “ tess of Stair expressed great indignation, and denied that ever she
 “ had said any such thing, and, in general, remembers, that the said
 “ Countess used some very harsh expressions in regard to the said Tho-
 “ mas Cochran. Depones, that, soon after the Duke of Douglas en-
 “ tered the room, the said Countess renewed the same harsh expres-
 “ sions about the said Thomas Cochran, and likewise reiterated her
 “ asseverations, that she never had said Lady Jane Douglas’s chil-
 “ dren

Def. pr.
 414, G. and
 415.

Def. pr. "dren were fictitious."—The same thing, in substance, is deposed to
426, A. by another witness who was present at the conference.

Def. pr. Another gentleman is said to have affirmed, that the Earl and Count-
433, G. tesses of Morton were at Paris, when Lady Jane came there to be deli-
434, A. vered, and that the Countesses had begged leave to wait on her during
her in-lying, but that Lady Jane, in place of accepting the offer, had
suddenly left Paris.—In fact, neither the Earl nor Countesses of Morton
were in France at the time.

Def. pr. These, and other such calumnies, were also propagated in publick,
426, E. and it was given out, that the Duke was in possession of a letter from
a Count Douglas, colonel of the regiment of Languedoc in France,
bearing, that Lady Jane had bought her children out of an hospital
in Paris.—This last mentioned story came to Lady Jane's ears before
her death;—it was wrote in a letter from Mr. Loch to Mrs. Hewit, in
May 1753, when Lady Jane and she were in London.—The Chevalier
Douglas, a native of France, and cousin of the Count's, was then in
London, and informed them, that this Count had died before the time
of Lady Jane's delivery; but that there was another Count Douglas in
France, who might possibly have wrote such a letter to the Duke.—
In order to clear up this matter, the Chevalier engaged to carry a let-
ter to him from Lady Jane, informing him of the report that had pre-
vailed, and desiring to know if there was any truth in it.—A letter,
some time after, came from the Count to Lady Jane, inclosing another
to the Duke of Douglas, in which he positively refused, that he knew
any thing concerning Lady Jane's delivery, or purchasing of children,
or that he had ever wrote any thing about the matter.—These letters
came to hand only a month before Lady Jane's death, and the Duke's
never was delivered to him.

Def. pr. In order to refute a story, that she had been seen by
886, A. many persons at Aix-la-Chapelle, without any appearance of pregnan-
cy, Sir John and Lady Jane wrote to Mrs. Tewis, informing her of
that injurious report, and desiring from her a notorial declaration of
what she knew concerning it.—Mrs. Tewis not only certified her own
knowledge of the pregnancy at Aix-la-Chapelle, but also obtained de-
clarations from her cousin, Joseph Tewis, and from a person, who had
been employed in widening Lady Jane's stays two several times, when
in that place. These declarations were not transmitted till after her
death, as appears from evidence to be hereafter stated; and there is no
doubt, that, had she lived longer, and thought it necessary to take fur-
ther proofs concerning the pregnancy and delivery, she would, in the
same way, have confuted with great ease, every other story which her
enemies had invented, or could invent, to her prejudice; at the same
time,

Def. pr. In like manner, in order to refute a story, that she had been seen by
290, 291. many persons at Aix-la-Chapelle, without any appearance of pregnan-
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time,

Purf. pr. In like manner, in order to refute a story, that she had been seen by
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ther proofs concerning the pregnancy and delivery, she would, in the
same way, have confuted with great ease, every other story which her
enemies had invented, or could invent, to her prejudice; at the same
time,

time, she appears to have been advised, that taking such steps on her part, was unprecedented and unnecessary. Def. pr.
370, C.

The Duke, however, instigated and wrought on by these artifices, was at last, in 1754, prevailed with to make a settlement of his estate, failing heirs of his own body, upon the Duke of Hamilton; and, in 1757, he executed another deed upon the same heirs, in which he declared it to be his intention, that the issue of his sister should in no event succeed to his estate.

In 1758 the Duke entered into marriage with the present Dutchess;—this was an event propitious to the defender;—the Duke was by degrees led from his retirement, and prevailed on to live in a manner suitable to his rank and fortune;—disinterested persons had an opportunity of speaking to him with freedom, and he came at length to be satisfied of the injustice which had been done to his sister.

In 1759 he entered into a postnuptial contract of marriage with the Dutchess, wherein he devised his whole lands and estate, failing the heirs of his body, and failing any particular nomination made or to be made by him, to his own nearest heirs and assignees whatever, without making any exception as to Lady Jane's issue.

Upon the 5th January 1760, the Duke revoked and cancelled the settlements executed in 1754 and 1757 upon the family of Hamilton.

And, upon the 11th July 1761, he made an entail of his estate in favour of himself, and the heirs whatsoever of his body; whom failing, to the heirs whatsoever of the body of his father James Marquis of Douglas; whom failing, to Lord Douglas Hamilton, brother of the present Duke of Hamilton, &c. And, of the same date, the Duke executed a separate deed, setting forth, "That, in the event of his death without heirs of his body, Archibald Douglas, alias Stewart, a minor, and son of the deceased Lady Jane Douglas his sister, would succeed to him in his lands and estate;" and therefore appointing the Dutchess of Douglas, the Duke of Queensberry, and several other noble and honourable persons, to be his tutors and guardians.

Previous to this alteration in the settlements, it is proved, that the Duke himself had made private enquiries, and even visited Mrs. Hewit, at a barber's house where she lodged, in order to be satisfied by her concerning the truth of the birth.—He also caused those who were about him converse with Mrs. Hepburn of Keith, Isobel Walker, and others, upon the same subject, and he himself had long conferences with William Loch.—It appears, indeed, that some of the Duke's people of business took the alarm at these transactions, for reasons unnecessary to be mentioned.—The Dutchess seemed too eager in supporting the cause of truth.—A temporary separation was occasioned, but a

Def. pr.
430, F, G.
431, A.

reconciliation having soon after taken place, the Duke came at last to be satisfied of the unfair practices which had been used with him. He did justice to the son of his injured sister; he regreted the treatment she had met with; and, with his last breath, accused White of Stockbrigs, and certain other gentlemen above mentioned, as the authors of the calumny which had been raised against her.

Upon the Duke's death, which happened 21st July 1761, the memorialist's tutors proceeded to serve him heir of tailzie and provision to his uncle; and, in order to wipe away for ever any doubt which might remain concerning his birth, it was thought proper to enter into a more full proof of it than is usual on such occasions.---Accordingly, such witnesses as were in and about Edinburgh at the time, and had access to know any thing concerning Lady Jane's situation when abroad, were called to give evidence before the jury; and as the Duke of Hamilton had taken out brieves for being served heir-male, the examination of these witnesses was attended by very eminent council on the part of the Duke, who cross-examined them so far as was necessary.---

Service, p. 29,
B.

The proof was not only satisfying to the jury, but carried conviction to the council and agents for the Duke of Hamilton.---The question was put to them, if they had any proof to offer, or any thing to say against the claimant's being served.---They declared they had no proof to offer, and no person appearing to object, the memorialist was unanimously served.

He soon after compleated his title by a charter from the crown, and was put in full possession, as heir of the Duke of Douglas.

Actions were afterwards raised at the instance of the Duke of Hamilton and of the Earl of Selkirk, for declaring their right to certain parts of the family-estate, which the Duke maintained were limited to heirs-male, by a deed in 1630, and the Earl affirmed were descendible to him in virtue of a deed executed in 1699.

In the course of this competition, your Lordships refused to sequestrate the estate, on an application to that purpose for the pursuers. Mr. Douglas was maintained in possession, and the cause having been advised on the 9th December 1762, you gave judgment in his favour against both the noble pursuers; in particular, it was solemnly adjudged, that the Duke of Hamilton's claim was barred, as well by the deeds of Marquis James, as by the destination to heirs whatsoever, in the Duke of Douglas's contract of marriage.

Despairing of success upon the construction of the family-deeds, and irritated against the cause of their disappointment, an attempt of another kind, but from which no benefit could ever accrue to them, was resolved on by the tutors of the Duke of Hamilton.---One of their number was dispatched to France, as early as the month of July 1762, with

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an intention, as now appears, of enquiring into the particulars of the birth.—The defender must be allowed to complain, that the intention of this journey was not fairly spoke out, and that an enquiry, which so nearly concerned him, should have been carried on for six months together in a foreign country, with a secrecy and mysterious concealment, unnecessary in the investigation of truth.—It was the end of November 1762, before the least hint was given to any of the memorialist's friends of what was going on against him in France. Your Lordships were then about to give judgment in the competition for the estate.—Application was made to you, in name of the pursuers, desiring a delay of judgment, because, by letters from France, their agent in that country had given to understand, that he was in possession of evidence sufficient to overthrow the service, and to prove, that the defender was not the son of Lady Jane Douglas.—Your Lordships very properly disregarded the petition, and proceeded in advising the cause.

Upon the 7th of that month, the present action was commenced in the form of a summons, at the instance of the Duke of Hamilton, for reducing the service, as having proceeded on false evidence.—The like actions were raised in the name of Lord Douglas Hamilton, the next heir by the Duke of Douglas's last settlement, on failure of the defender, and at the instance of Sir Hew Dalrymple Baronet, pretending to be one of the heirs of line, failing issue of Lady Jane Douglas.—The other heirs of line, viz. the Earl of Hyndford, Sir Robert Menzies Baronet, John Swinton of Swinton, Esquire, &c. though equally intitled with Sir Hew Dalrymple, did not choose to concern themselves in a process of so odious a nature.

PRESENT
ACTION
AND PRO-
CEEDINGS
IN IT.

At the same time, the heirs of line have a much better title and pretence to be parties in this cause, than those who originally commenced the action, and at whose expence it is carried on.—The world will hardly believe, that the Duke of Hamilton, whose money has been so profusely bestowed in supporting a law-suit, the most expensive that ever at any time, or in any country, was carried on, has not the smallest interest in the matter, or chance of reaping one sixpence of benefit, whatever way the decision shall be given. But to your Lordships it is well known, that this is the case. The family-settlements are such, that the Duke of Hamilton can never, in any event, have the least prospect of enjoying the estate of Douglas, unless the deed, once executed in his favour by the Duke of Douglas, but afterwards cancelled, could again be raised up, which is impossible.

With regard to Lord Douglas Hamilton, he is indeed the next heir called to the succession in the deed 1761, and, as such, may have a title to insist in this action.—But his interest to do so may be very much questioned.

questioned. It has been affirmed by the tutors of the Duke of Hamilton, who are also tutors of Lord Douglas, that the deed 1761 is reducible on death-bed.—If so, Lord Douglas's chance of succession depends entirely on the memorialist's succeeding in this cause.—Mr. Douglas has made up his titles, and enjoys the estate on the deed 1761; and if he shall happen to die without children, and without making any alteration in the settlements, Lord Douglas Hamilton will succeed to him of course.—If, on the other hand, the memorialist should have the misfortune to be set aside in this action, the next step may be to reduce the death-bed deed, and so Lord Douglas's hopes of succession are at an end.

The summons of reduction, in name of these parties, was conceived in general terms, viz. that all the material facts deposed to by the witnesses in the service were falsehoods, and that “ the said Archibald Stewart, and the other pretended male-child of which the said Lady Jane Douglas was said to have been delivered at the time and place fore said, were spurious, and were not the children of the said Lady Jane Douglas, as would be made appear by a variety of proofs, to be more particularly condescended on in the course of the process.” But the story given out, as the foundation of the action was, that no Madam la Brun had kept an hotel in the Fauxbourg St. Germain; that no accoucheur of the name of La Marr could be discovered; that, by the police records, it was ascertained, that Lady Jane, Sir John, and Mrs. Hewit, had entered to the Hotel d'Anjou on the 8th July 1748, and that no delivery had happened in that house.

The first step taken in the process, was the presenting a petition to the court, on the 9th December, in name of the pursuers, desiring an examination of witnesses to lie *in retentis*.—This petition was ordered to be answered.—The application was plainly irregular, because no condescendance of facts, or list of witnesses, had yet been given in, and so the court afterwards found.—But, in the mean time, a second petition, unintimated, was read to your Lordships, on the morning of the 14th December, praying an immediate examination of Sir John Stewart, for this reason, That he was said to have an intention of going abroad; and, upon this suggestion, your Lordships were prevailed on to grant an immediate order for his attendance.

Sir John had indeed an intention of going to Paris, as soon as his health would permit, but he happened, at that particular time, to be confined to his bed by a severe indisposition.—However, he complied with the order of court, and, in presence of your Lordships, was examined for three days successively, in the way of judicial declaration, upon interrogatories framed by the pursuers, relative to a great variety of facts, which had happened in the years 1748 and 1749.

The

The council for the memorialist were allowed to be present, but as the action was not yet in court, and no condescendence of facts had been given in, they were totally unprepared, and ignorant of the facts on which Sir John was to be examined, so that they had it not in their power to put cross questions to him, in order to expiscate what might be useful to their client, or to make him explain any thing obscure or inaccurate in his answers, to the numberless questions put to him by the other party.—They could do little more than listen to what was going on, and though they were doubtful what was the intention of the examination, they took the liberty to suggest, that if evidence was intended to be made of it, the witness ought to be upon oath.—This, however, the pursuer's council seemed rather to wave. And the interlocutor pronounced by your Lordships was as follows: “ The Lords
 “ having heard what is above represented, they allow Sir John Stewart's
 “ declaration to be taken in the mean time, reserving to the petitioners
 “ to insist for examining the said Sir John Stewart upon oath, if they
 “ shall afterwards insist for the same, and all objections to such declaration, as accords.”

Every one who was present at this examination must bear testimony, that Sir John Stewart, whatever slips of memory, or mistakes he may have fallen into, when questioned upon such an infinite variety of distant facts, at a time when his faculties were impaired by age, indisposition, and a train of misfortunes, did nevertheless behave in that firm and intrepid manner, which could only proceed from the consciousness of innocence and truth.

The declaration being closed, it was sealed up to lie *in retentis*, subject to the further directions of the court.—The pursuers, however, had the advantage of being possessed of copies of the interrogatories, which they themselves had put, and, from the memory of their council and agents, were enabled to make out such notes of his answers, as were of great service to them, and were accordingly used for the purposes to be after mentioned.

The litigation since occasioned by this declaration, will be fresh in the remembrance of the court, and need not here be particularly stated.—Your Lordships, by an interlocutor, of this date, “ Refused to
 “ examine Mrs. Hewit, (whose examination had likewise been applied
 “ for) because a particular condescendence of facts was not given in.”
 And, of this date, when a second examination of Sir John was demanded, upon new facts, after the condescendence had been given in, you appointed this second examination to proceed in the regular way, upon oath.

January 21st,
1763.

August 5th,
1763.

The defender's council, upon reflecting on the procedure in Sir John's former examination, thought it their duty to represent to your
 G Lordships,

Lordships, that the same was liable to objection; that parties had not been on an equal footing, at the time it was taken; that an unfair use was intended to be made of it by the pursuers; and that full justice could not be done to their client, unless the declaration was withdrawn, and Sir John re-examined on oath on the facts therein contained; and at the same time cross-examined on the part of the defender.—Your Lordships, upon advising this matter on the 5th August 1763, “Delayed giving judgment upon it till the 15th November there—after.” And no further application having ever been made for a re-examination of Sir John Stewart, during his life, the question came lately to be tried before your Lordships, Whether this declaration ought to be received into the proof, or not?—You allowed it to be admitted *as a circumstance of evidence*, and the defender withdrew an appeal which had been entered for him against that judgment.

Soon after Sir John’s examination, the Dutchess of Douglas, attended with some persons of business, went over to Paris, on behalf of the defender, in order to enquire into the proceedings in France, but they could discover nothing to alarm them, or to justify the strong affirmations, which had so rashly been made to his prejudice.

TOUR-
NELLE
PROCESS.

In this way matters stood, when, upon the 17th of January 1763, and no sooner, the friends of Mr. Douglas at Paris discovered, to their no small surprise, that a process had been some time depending before the Tournelle or Criminal Chamber of the Parliament of Paris, relative to this affair. Upon further enquiry they were informed, that many witnesses had been secretly examined before the Tournelle, upon a plaint exhibited by Sir Hew Dalrymple, and Mr. Andrew Stewart, as tutor to the Duke of Hamilton, against Sir John Stewart and Mrs. Helen Hewit, accusing them of the crime of *partus suppositio*, and that this plaint had been signed and given in to the Parliament as far back as the 17th December 1762, soon after the action had been commenced in the Court of Session. In so very mysterious a manner had this process been carried on, that though the Dutchess of Douglas and her assistants were at pains to make enquiries from their first arrival in France, and had occasion more than once to converse with Sir Hew Dalrymple and Mr. Andrew Stuart; yet, till the time above mentioned, they never once had the least hint of it, and then only by accident.

It was evident to every person, that the sole intention of this pretended criminal suit was to prepossess and influence the witnesses to be afterwards used in the civil action, by an *ex parte* examination upon oath, as well as to wound the defender’s interest in France, by creating a general and most unfair prejudice against him. Besides the first plaint, a variety of additional ones were given in, as circumstances occurred, all of them conceived in the declamatory stile of a French pleading.

pleading, containing more argument than fact, and asserting the imposture to be already detected.

By the forms of criminal proceeding in France, when a witness is called on to be examined, no person is present but the judge or commissioner who examines, and the clerk who takes down the deposition; and, by way of assistance to the witness's memory, the complaints are read over to him, which are the text on which he is to be examined.—The complaints exhibited in this case, were very well calculated for refreshing the memory, as well as for guiding the judgment of a witness; and, if the pursuers have not profited by this advantage, they have been in very bad luck.—Many of the witnesses who have given testimony for the pursuers, had occasion to undergo this previous trial of their evidence in the Tournelle; and your Lordships, as well as the House of Peers, though you did not incline entirely to exclude the evidence of these witnesses, testified the greatest indignation at the methods which had been taken to influence them, and admitted them only *cum nota*, reserving all objections to their credibility.

Numberless, indeed, were the inconveniencies resulting to the memorialist, from those ill-advised proceedings in France.—Books and papers, which were to have been founded on in the cause, remain to this day locked up in the Tournelle.—Witnesses were shy of speaking out, because the affair was *en justice réglée*.—The principal officers of Police were engaged on the side of the pursuers, and, when applied to by those acting for the defender, refused to give them any assistance in a matter depending before the Tournelle.—The execution of the commission, issued by your Lordships for taking proofs in France, was for a year interrupted, by the collision of jurisdictions between this Court, and the King of France and Parliament of Paris; and all this occasioned by a most indirect and improper attempt to obtain a precognition of witnesses in a civil cause, even after the civil action was commenced; a thing destructive of justice, derogatory to the honour of your Lordships, and contrary to the established laws of this kingdom.

In the practice of the English courts, it is highly culpable to raise a suit, either civil or criminal, with a view of prejudicing another suit already depending. An instance of this kind happened not many years ago, in the case of Muilman. Constantia Philips had brought a suit against him in the ecclesiastical court, for proving a marriage, and, during the dependance of it, she prevailed with a brewer, to whom she was truly indebted, to bring an action against her in the court of King's Bench, for payment of the debt; Mrs. Philips pleaded there in defence, that she was under coverture to Muilman.—The reply made for the brewer was, that at the time of her marriage to Muilman, she was already married to another man, and, consequently, her
marriage

marriage with Muilman was void. This was precisely the point at issue in the ecclesiastical court, and it appearing, that Philips and the brewer were in collusion to prejudice the suit depending in the proper court, the Attorney, who advised this proceeding, was committed to prison, together with Mrs. Philips herself and the brewer, and an eminent council then at the bar was in danger of sharing the same fate.

The pursuers have in effect admitted, that their view was to pre-cognosce the evidence; nor indeed was it possible, that an action before the Tournelle could be intended for any other purpose. The conviction of Sir John Stewart and Mrs. Hewit, foreigners to the state of France, and not residing within it, was an idea too absurd, to be seriously adopted by the advisers of that process. One other effect it could only have, which was to hinder Sir John Stewart from prosecuting his intention of going to France, to assist in any enquiry that might be necessary for the memorialist; his friends not inclining, that a man of his great age and infirmities, should risque the trouble and distress, which a criminal prosecution in a foreign country (and where the torture is in use) could not fail to be attended with.

MONI-
TOIRE.

But of all their proceedings in France, none could be more unjustifiable, than the publication of that inflammatory libel, called the Monitoire. In certain cases, the defender can admit the publication of a monitoire to be lawful and proper: for example, where a man has been murdered on the high-way, by persons unknown, it may answer the purposes of justice, to affix a publick advertisement, setting forth in general, that such a fact has been committed, and inviting persons, even under the promise of a reward, to discover the actor or accomplices.—But if, on the other hand, no certain *corpus delicti* appear; if the object of enquiry be, whether a crime has been committed, or not? nothing can be more gross, and nothing more subversive of justice, than to begin with publishing to the world a minute detail of facts and circumstances, charging the crime, as already established, asserting in express terms, that the person *accused* is *guilty*, and, at the same time, inviting all and sundry to appear and give evidence against him.

Such however was the monitoire, published by the pursuers in July 1763, under the sanction of the Archbishop of Paris, read in the churches, affixed in the streets, and dispersed not only over the kingdom of France, but in Germany, and other places where the proof was to be led. It contains a very pointed account of the circumstances and facts, alledged for establishing the imposture, treating these facts as already ascertained, and giving descriptions of Sir John, Lady Jane, and Mrs. Hewit.—At the same time, all persons were required,
under

under pain of excommunication, to reveal to their parish-curés, all facts and circumstances known to them, which might further establish the imposture; these revelations to be sealed up, and transmitted to the procurer-general.

The consequences necessarily attending such a publication, are, in the first place, to raise a popular cry and opinion against the party accused. 2dly, To instruct witnesses what to say, and to dispose them to make their depositions tally with the great fact, which they see roundly and positively affirmed. 3dly, To give them an opportunity of combining in the same circumstantial story. And, 4thly, To intimidate witnesses from saying any thing in favour of the accused, whom they suppose to be already convicted,—all equally destructive of justice, and contrary to every legal rule of proceeding known in this country. In England, attornies have been sent to prison, for publishing narrations in the news-papers relating to actions in court.

The use of monitoires in France, was authorised by an ordonnance of Lewis XIV. in 1670, and, from the commentaries of their lawyers, it appears, that they were only meant to be given *in subsidium, et quando veritas alio modo haberi non poterat*.—It would seem therefore, that the pursuers, notwithstanding their strong assertions, and boasted proofs, thought it necessary, as far down as July 1763, to try this *subsidiary* method of procuring evidence, in which however they were pleased to transgress even the known regulations and customs of France in such cases.—Art. 4th of the ordonnance 1670, says, “Les personnes ne pourront être nommées, ni désignées par les monitoires,” Bornier, tit. de monitoire, art. 1. and it is an established rule, that the person accused must not in any shape be described or pointed out; far less ought a crime to be positively affirmed, which is only suspected. Tit. de monitoire, art. 4.

Abuses of this kind have some times been committed in France, but never in so glaring a manner as in the present case.—In the late affair of Calas, one of the irregularities complained of, was the publication of a monitoire, nor fairly describing the situation in which Marc Antoine Calas had been found, nor expressing any uncertainty, whether he had been hanged by himself, or by another person, but insinuating, That his family had put him to death, and reciting some particulars, with a view of stirring up the indignation of the people, against the unhappy father and family.—Accordingly, it had the desired effect.—The populace, who had gathered round the house, after the alarm was given, and who could know nothing of the real circumstances of the case, were eager to supply, from their imagination, the defects of their knowledge, and the monitoire proved of singular use to them, in assisting their memories.—It was in this manner that

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proofs

proofs were acquired against the unfortunate John Calas, whose innocence stands now confessed, and whose tragical end will remain an eternal reproach upon the justice of that bigotted parliament which condemned him.

The monitoire, in that case, consisted only of a page of paper, and did by no means enter into that minute and particular detail, which is to be found in the publication against the defender.—Yet the lawyers, who, with equal spirit and eloquence, appeared on behalf of the widow, in the parliament of Paris, cried out against it as a most illegal device, tending to mislead and inflame the minds of witnesses, and to exclude all circumstances of exculpation.

In that case there was a better pretence for a monitoire than in the present.—It was certain that a crime had been committed, *viz.* either suicide or murder, and the only error in the monitoire was, throwing out some insinuations, with a view of creating the suspicion of murder.—In the present case, the very question at issue was, Whether there was a crime or not? The pursuers will not pretend to say, that, before issuing the monitoire, they so much as knew of any person at Paris, having lost, or given away a child in July 1748.—An assertion therefore of the fact was improper and unfair, and can be considered in no other light, than as an invitation to every low wretch in Paris, who might have lost or exposed a child about that period, to make the circumstances of his case agree with those of the monitoire. This use was accordingly made of it, as there will be occasion in the sequel to show.

Previous, indeed, to the publication of the monitoire, a discovery had been made, that one Sanry had given away a child in 1749 or 1750, and this the pursuers endeavoured to apply to the case of Sholto; but in order that Sanry and his family, a set of the most abject and miserable wretches, perhaps in all Paris, might be under no mistake as to time, place, description of persons, and other circumstances, it was thought proper, in the monitoire, to give a very particular account of this pretended enlèvement, by way of a memorandum, or text, to these poor ignorant people, when they came to be afterwards examined.

But it is unnecessary to enlarge further upon these proceedings, which, to the conviction of every impartial man, must appear highly injurious, and must indeed have the effect of tainting and discrediting the whole of the proof attempted by the pursuers.—If fair things had been intended, where was the use of going out of the common road? and, in a question before your Lordships, why desert those forms which have been established as essential to the administration of justice? —With much difficulty, these operations in France were at last put

a stop to, and a proof, *before answer*, allowed to go on under the authority of your Lordships, though not till after every advantage had been taken of the defender, and every method used to create influence and prejudice against him.

Two volumes of very extraordinary size have been reported, and on these the cause of Douglas is now to be tried.

Questions concerning the state of persons are unusual in this country, and indeed no case ever in practice occurred in the least degree similar to the present.—It may not therefore be improper, before we enter into the proof, to submit some observations on the general nature and tendency of the action, and to enquire a little into those principles which reason, and the law of nations, seem to point out as the rule for deciding it.

OBSERVATIONS IN LAW.

The state of a man, is that rank or place which he holds in society, considered either with respect to his country, his family, or his condition as a freeman or a slave. It is the most important of all civil rights; and every consideration of public utility, as well as private justice, requires that the state which providence has assigned to any man, should not be precarious; that, on the one hand, a person who claims to be of a condition which he never enjoyed, should not easily be admitted to it; and that, on the other hand, a man should not, without the most urgent reasons, be degraded from an advantageous state, which he has always possessed, to one of a worse kind, with which he has had no acquaintance or connexion.

If a man, who, from his infancy, has enjoyed the privileges of freedom, should be reclaimed into slavery, the presumption, as well as the favour, will be on his side; and it will be incumbent on the person who claims him as a slave, to make good his assertion by clear and undeniable proofs.—If a child, born of a married woman, has been acknowledged and received as lawful, hardly any evidence will be admitted to prove him a bastard.—If a person has been brought up and educated as the son of a certain man and a certain woman, if he is in possession of filiation, as their child, and enjoys rights under that character, he has the presumption of law, and of reason, in his favour, and it will require convincing proofs to show, that his state is *supposititious*, and that he is not the child of his reputed parents.

No fact is of so much importance to be ascertained, and yet none is so incapable of direct proof as that of filiation.—In the nature of things, the evidence of it must chiefly arise from the acknowledgment and constant entertainment of parents.—No man can naturally have any knowledge of his own original, other than this, that he finds himself in possession of a certain name and rank, as the son of a man and a woman who are supposed to be his parents.

On

Farin. con-
fil. lib. 1.
confil. 58.
Addit. 6.
Masc. de prob.
vol. 2. concl.
788. N. 8.
Bero. quest.
90. N. 5 and 6.

On the part of the father, it has been by all lawyers acknowledged, that a proof of filiation is impossible, *quia procreatio non cadit in hominis sensum*.—On the part of the mother, a direct proof may often be had, where the mother herself, and midwife and witnesses happen to be alive.—But it must happen still oftner, that no such proof can be obtained.—A person's birth may be challenged at a distance of time, when neither mother nor midwife is alive.—The servants or others who assisted at the birth may also be dead, or perhaps none such were present.—Children have even been brought forth without the assistance of a midwife or any other person. How then can such a birth be ascertained by evidence?—It is laid down by every lawyer, that even, maternity may be established by presumptions. Farinacius, Mascardus, Beroius, and others maintain this doctrine, and recite a variety of presumptions, which apply equally, whether the father alone is disputed, or both father and mother.

No man therefore can be obliged to bring positive testimony of his birth. In every civilized country, certain legal presumptions have been adopted, which, for the sake of good order, and the general quiet of society, are held as incontestible proofs of filiation, and cannot be overturned, unless the impossibility of the fact be demonstrated.

On the part of the father, it is a presumption established in the civil law, and adopted in the modern laws of all nations, that “*pater est quem nuptiæ demonstrant*.”—A married woman's child is presumed to be the husband's.—This may happen in many instances not to be true; but the law, from a presumption of innocence, and for the order and peace of society, holds it to be true in every case, and refuses a proof to the contrary, unless where the husband has either been absent or incapable.

A child produced within six months after the marriage, may belong to any other person, as well as to the husband; but if he acknowledge antenuptial commerce with the mother, the law presumes him to be the father, and the child becomes legitimated by the marriage.

A bastard has no certain father, yet, if a man acknowledge commerce with the mother, the law will presume him to be the father, and subject him in aliment.

A woman produces a child within ten months after the death of her first husband, and more than seven months after her marriage to a second.—In this case the child may, in the nature of things, belong either to the first or to the second husband. The law, from motives of expediency, fixes it upon the second, and gives an heir to his family, of which there is only an equal chance that he is the father.

The above presumptions have been introduced where the father is uncertain.—The following, which are treated of by lawyers, apply to the case, where either father or mother are disputed.—The first of this kind is the *tractatus*, or *treatment* of parents, when they entertain a child in their family, and behave to it as theirs. “ Si quis tractaverit aliquem ut filium suum, etiam si nulla verba intervenerint, constituit eum in quasi-possessione filiationis, donec contrarium probetur.” And this presumption takes place, “ etiam si mater et maritus cum juramento negarent esse filium suum.”—“ Et etiam procedit, si prius fuit tractatus tanquam filius, et postea respueretur.”—The particular acts of treatment, from which the lawyers infer this presumption are, rejoicing at the child’s birth, putting it to nurse, and afterwards, to school, maintaining and giving it cloaths, baptizing the child, and giving it a family name, recording that name in *libro natalium filiorum*, &c.

Masc. vol. 2.
Conclus. 790.
N. 1 and 2.
5. Menoch.
de præf. lib.
6. Præf. 53.
N. 21, 22,
26.
Masc. ibid.
N. 38. and
concl. 796.
Farin. decis.
crim. lib. 2.
decis. 332. de-
cis. lib. 1. de-
cis. 37.

2. *Nominatio parentum*, i. e. the assertion of the supposed parents that the child is theirs. This presumption they consider as a circumstance of weight, more especially, where the declaration is made in judgment, or in any other solemn manner; and they lay it down as sufficient to throw the burden of proof upon the other party.

Masc. ibid.
concl. 791.
Menoch. ibid.
N. 34, &c.

3. Another presumption is that which arises from *common opinion* or *fame*, which they reckon sufficient to place the child in *quasi-possessione filiationis*.—This is agreeable to our daily practice in the service of heirs, where a general proof of *habite and repute* is for the most part held as sufficient evidence of propinquity.

Masc. ibid.
concl. 792.
Menoch. ibid.
N. 43.

4. Another presumption of filiation arises from *similitude of features*. There have been nations which allowed a communication of wives, and where the children had no other way of discovering their fathers but by resemblance of features.

Masc. concl.
793. Menoch.
ibid. N. 45.
Pomp. Melā;
lib. 1. cap. 8.

5. The next presumption mentioned by the lawyers is *institutio hæredis*, where the supposed parents make any deed or settlement in favour of the child, “ etenim non est probabile, quod quis institutur ut filius, nisi vere sit filius.”

Masc. concl.
794.

Another circumstance, noticed by the lawyers, in favour of filiation, is *sententia jam lata*, when the child has already obtained judgment for him in another cause upon the same ground; and this would seem indeed to be conclusive “ si sententia fuit lata principaliter super ipsa filiationis causa.”

Masc. conclus.
795. Menoch.
ibid. N. 48.

Of the presumptions above mentioned, some are, no doubt, stronger, and some weaker, according to circumstances; but, “ quæ non possunt fingula, multa juvant;” and, where the whole are joined, as the defender will show them to be in the present case, the force

Mascard.
Concl. 797.

of them must be irresistible, even independent of any direct or positive evidence.

The defender will admit, that, notwithstanding every presumption in favour of a person's birth, there is a possibility of the fact being otherways.—The parents may have been guilty of a crime, and the child may be supposititious: but, in order to establish this crime, and to get the better of legal presumptions and proof, justice requires, that evidence, the clearest and most infallible, should appear; and without such evidence, it would be doing violence to the most essential rights of society, to deprive any man of that state of which he is legally possessed.

This leads the memorialist to enter into a more particular discussion of two points of law which were argued in the pleadings, and were considered as of importance to the decision of the cause: 1mo, Upon what party does the burden of proof in this case lie? 2do, What species or degree of proof is necessary? The pursuers, extremely sensible that, after all their investigations, they had failed in supporting their challenge, with that proof which was incumbent on them, and which they had with so much confidence undertaken, were desirous to shake themselves loose of the burden, or, at least, to make it as easy as possible, by maintaining that, in a case of *partus suppositio*, *conjectures and presumptions* were sufficient for detection.—To insist in doctrines so untenable in law, and so contrary to every principle of justice, was reserved for the cause of Douglas, in which so many extraordinary things have appeared.

1. ONUS
PROBANDI.

The pursuers, in their plaintes, and other publications in France, affected to consider Mr. Douglas as the *reclamant*, i. e. as the pursuer or claimant of a new state or birth-right, and themselves, they were pleased to denominate, the heirs of the Duke of Douglas, appearing in defence, against the claim of an upstart pretender.—In their pleadings in this court, they expressly maintained, that the *onus probandi* was incumbent on the defender.—This they said was undoubtedly the case, when he first entered his claim in the service; and they seemed to consider the reduction of a service as no more than a continuation of the original proceedings, which was attended with no alteration in the situation or rights of the parties, and, all matters being thus entire, the defender could not avail himself of the acknowledgment of his parents, or of the habite and repute consequential thereof, the same being necessary ingredients in the crime of *partus suppositio*, and never admitted as a presumption in such cases, unless when supported by clear and direct evidence of the birth.

To

To this it is answered, imo, That the situation of parties is now entirely different from what it was in the service. The memorialist is by no means *in petitorio*.—He is fully and legally possessed of his filiation, and of all the rights consequent on it, by a service and retour, as heir to his predecessor, proceeding on evidence, which, by the admission of all parties, was a sufficient authority at the time for obtaining that service, and he must stand for ever vested in those rights, and possessed of that filiation, unless by clear and indisputable contrary proofs, it shall be ascertained, that he is not the son of Lady Jane Douglas, but a supposititious person.

The defender might admit, that if he had been served upon no evidence whatever, or directly in the face of the evidence, it would still be incumbent on him to support his claim, as heir to the Duke of Douglas, because the verdict would, in such case, be held to be iniquitous and void.—But the case of the service now in question is extremely different. The proof adduced was undoubtedly sufficient to authorize any jury to serve. The tutors of the Duke of Hamilton appeared by their council, and made all the opposition in their power. A variety of witnesses deposed, not only to the acknowledgment of the parents, and to the general habite and repute, but to the actual pregnancy and birth. The evidence was admitted to be compleat, and a verdict was allowed to pass in favour of the memorialist, and his service to be retoured, in virtue of which he obtained possession of his predecessor's estate, and of every right competent to him as the son of Lady Jane Douglas, and heir of that noble family ; nor is it to this day disputed, that the verdict of the jury was fully warranted by the evidence produced to them. In these circumstances, it is plain, that in the action now brought before your Lordships for reducing that service, he is to be considered in no other character than as a defender, endeavouring to maintain the possession of those rights in which he has been legally vested. The pursuers have brought their challenge into court, subsuming on this ground, that Mr. Douglas is not the son of his supposed father and mother, but a supposititious child, and concluding, to have it so found and declared by a sentence of your Lordships. The memorialist, on the other hand, founds on his service and retour, and denies the allegation made by the pursuers. The rule of law is, "Actori incumbit probatio, et actore non probante reus est absolvendus." And another rule is, "Probat denique is, qui non possidet, utpote quo deficiente in probatione possessor vincit ac absolvendus est." The pursuers therefore, before they can prevail in this action, must make good their charge by full and satisfying evidence ; and, indeed, before they were so much as heard in court upon the grounds of their challenge, they were obliged to specify these grounds in a pointed and particular

particular condescendance ; and, had there been no apparent relevancy in that condescendance, it is certain, that your Lordships would not have allowed them a proof, but would, in course, have dismissed the action. This condescendance (the fruit of their long and private investigations in France) your Lordships, before answer, as to the relevancy, allowed them to prove, and, at the same time, allowed a proof in general to the defender, of all facts and circumstances, as is usual in such cases, but nothing was necessary to be proved on his part, unless in so far as it might be a matter of prudence in him to weaken or redargue any circumstances brought in evidence against him by the pursuers. The verdict of the jury is a full and complete document of his filiation, without the aid of further evidence, unless the pursuers can show a clear and legal contrary proof, ascertaining him to be supposititious.

It is a matter of no consequence, that Sir Hew Dalrymple and Lord Douglas Hamilton, who are parties in this cause, did not appear or give any opposition to the service. The service of an heir does by no means resemble a decret in absence, which may be easily set aside or opened at the suit of any person having interest. The brieve of mortancestry is not a pleadable brieve ; no person whatever falls to be made a party to it, though all and fundry are called to appear for their interest by an edictal citation ; and therefore, though a service should proceed without opposition, it is a full and complete title to the claimant against all the world, unless in a reduction at the instance of some person having interest, it can be shown by clear and unexceptionable evidence, that the party had no right to be served.

But, 2do, Supposing matters were entire, and that your Lordships were to consider the defender as still before the inquest, claiming to be served heir to his uncle, as the son of Lady Jane Douglas, he does, with submission, deny, that the *onus probandi* would lie upon him, further than to show, that he has been acknowledged or understood to be the son of his supposed parents. This is all the proof of filiation that is necessary in a service ; and this general presumption being established in favour of the claimant, he who opposes must undertake the burden of contrary proof, by producing evidence, either of bastardy or *partus suppositio*.

The doctrine maintained by the pursuers, that the acknowledgment of parents is of no avail, where *partus suppositio* is charged, is a mere *petitio principii*. It may perhaps be true, that, in a criminal accusation of the supposed parent, it would not be of much avail to him in the way of defence to say, that he has acknowledged the person in dispute to be his child ; because this is the very thing of which he is accused, viz. that he has assumed and acknowledged a child to be his
which

which does not belong to him; and therefore, if the prosecutor in such action were to bring evidence of the fact charged, viz. the actual *supposition*, a proof of simple acknowledgment would not go any length in exculpation, though, even in such a case, the acknowledgment might be attended with such circumstances of affection and uniform conduct towards the child, as would render it a presumption of great weight in favour of the party accused; but, at any rate, the case here is widely different. Whatever effect it may have in a question with the parent, it is clear, that the *tractatus* or acknowledgment has a legal effect and operation in favour of the child, until it be taken off by contrary evidence; and, by the law and practice of this country, founded on the clearest expediency, it is a sufficient warrant for procuring him the possession of his ancestor's estate, unless some person having interest shall instruct, by satisfying evidence, that he is a bastard or supposititious child. It is not enough for the pursuers to say, that the memorialist is a supposititious child, and, consequently, that his supposed parents were criminal, and their acknowledgments good for nothing. These facts will not be taken upon their assertion.—They must prove them by satisfying evidence, and, in the mean time, until they do so, the memorialist is intitled to hold by the legal presumption, arising in his favour, from the constant acknowledgment and behaviour of his parents.

Were the contrary doctrine founded in law, it would be extremely embarrassing to many of the subjects of this kingdom, and would create great confusion in every commercial country. Many thousands of persons come home and settle in their native country, after residing most of their lives in the remotest corners of the world. They bring home children with them, whom they uniformly acknowledge and educate as such, but who, in all probability, upon the death of their parents, cannot produce the least vestige of direct evidence of their birth, nor proof of any kind, further than the acknowledgment and behaviour of their supposed parents, during the time they have been in their own country; yet, according to the doctrine maintained by the pursuers, the nearest relations, by bringing a charge of *partus suppositio* after the death of the parents (which may be done in every case) will effectually debar these reputed children from the possession of their fathers estate, until a proof of the actual birth and delivery can be had from the most distant countries, which it may often be impossible to obtain.

The memorialist therefore contends, that, in every case, where no contrary proof is brought, a proof of the acknowledgment of parents, or, which is still less, of being habite and repute the child of these parents, is a sufficient authority for any jury to *serve*, and no man's

birth-right or filiation is in the least degree shaken by a charge of *partus suppositio*, unless that charge be supported by full and legal evidence.

Quæst. 150.
N. 246.

Tit. de partu
supposito, § 2.
N. 91.

The authorities adduced by the pursuers from Farinacius and other doctors on the civil law, for proving, that the acknowledgment of parents has no operation, when the challenge of *partus suppositio* is moved, go no further than this, that such acknowledgment is not full proof, so as to overbalance strong presumptions or proofs of *partus suppositio*. The words of Farinacius are these: “Præsumptiones suppositi partus non tolluntur ex eo, quod suppositus filius fuerit a parentibus tractatus pro filio.” These words suppose, that there is already a proof of the supposition by circumstances and presumptions; and, in the subsequent part of the title he proceeds to enumerate the circumstances which he has in view, viz. “confessio matris, venter culcitra aut panis tumefactus,” and a variety of others to be hereafter mentioned. These, he is of opinion, will not be overbalanced by the acknowledgment of parents; which is, in other words, admitting, that the acknowledgment of parents is a strong presumption, even in questions of *partus suppositio*, and though it may yield to stronger contrary presumptions or proofs, is not to be defeated by the bare allegation of *partus suppositio*, without proof. And indeed the same thing is still more clearly expressed by Caranza, a favourite author of the pursuers, who, after laying down the doctrine maintained by some lawyers, that *tractatus et nominatio parentum*, &c. are of no avail in questions of *partus suppositus*, adds these words: “Sed hæc intelligenda sunt, dum tamen de partus suppositione integre et plene constet.”

The memorialist does not pretend to set up the acknowledgment of parents, as of itself a *probatio probata* of filiation, nor is there the least occasion to do so in the present case; but he contends, that a proof of such acknowledgment, or even of habite and repute, is good presumptive evidence, and sufficient ground for a jury to serve. Such service may indeed be challenged, upon evidence offered, that the child is supposititious; but, so long as clear and undeniable evidence is not brought of the challenge, the verdict and proof on which it proceeded will stand in full force. The bare instituting a charge of *suppositio* will not redargue, or in the least unhinge the presumptive evidence already adduced; and therefore, unless the pursuers in this case can satisfy the Court, that they have brought an undoubted proof of *partus suppositio*, the memorialist would fall to be maintained in possession of his filiation, supposing the service were still open, and no other proof brought but the acknowledgment of Sir John Stewart and Lady Jane Douglas.

It

It was argued for the pursuers, That, if the acknowledgment of parents were to be held as a proof of filiation, it would amount to a sanction of the crime of *partus suppositio*, and that the crime would become its own protection, the acknowledgment being a necessary ingredient, without which it cannot be perpetrated. But this observation proceeds from not attending to the obvious distinction already made between *probatio probata*, and presumptive evidence of any fact. The defender's doctrine gives no sanction to the crime, because he does not maintain, that the acknowledgment of parents gives an indefeasible right to the child; on the contrary, he admits, that it may be redargued by proof. He only maintains, and he thinks, on solid grounds, that such acknowledgment is a sufficient presumptive evidence of filiation, which is not in the least affected, by instituting a charge or accusation of *partus suppositio*.

It was further said, That the defender having been born in a foreign country, was only a subject of this kingdom by the act of Queen Anne; and, in order to intitle him to the benefit of that act, was obliged to bring full evidence of his birth and propinquity.

The act of Queen Anne says, "That the children of natural-born subjects, though born abroad, shall be held to be natural-born subjects of this kingdom to all intents and purposes whatsoever." This act, therefore, places such children directly in the same situation, as if they had been born at home, and, in serving them to their predecessors, or, in questions concerning their civil rights or interests, does not make the least difference between them and natural-born subjects, or direct any other kind of proof to be taken, or different form of proceeding to be used.

The pursuers, upon this branch of the argument, also insinuated, that in opposition to the general presumption arising from the acknowledgment of parents, or habite and repute, there were in this case a variety of suspicious circumstances, arising from the conduct of the parents; defects in the evidence of the actual delivery; suspicions and reports which took place very early, with regard to the birth, &c. from which it appeared, that the habite and repute was not universal, and the acknowledgment not to be trusted.

But your Lordships will observe, that this is entering into the proof, which has since been brought in the reduction, and which the memorialist will have occasion, in the sequel, to consider. The constant and uniform acknowledgment of the parents, is a fact proved beyond doubt, both in the service and in the present action, nor is it indeed contradicted by the pursuers; and as to any pretended suspicious circumstances in the conduct of his parents, the memorialist will
give

give a satisfying answer to them, when he comes to treat of the proof.

As to *habite and repute*, which in all cases is founded upon, and is a necessary consequence of the acknowledgment of parents, it is by no means necessary that all mankind should concur in the same opinion or belief, without one dissenting voice. In the service it was proved, by all the witnesses produced, that the memorialist was commonly *habite and repute*, and understood to be the son of Sir John Stewart and Lady Jane Douglas; and though, from the proof since brought it appears, that a contrary report was propagated by a few designing persons in this country, founded upon absolute falsehoods, and disbelieved by every person abroad, or who had best access to know any thing of the real truth of the matter, the memorialist will satisfy your Lordships, when he comes to treat of that head of the proof, that the general *habite and repute* in his favour, does not suffer the smallest exception, from those false and malicious reports. Lord Stair says, B. 4, tit. 45, § 4. "In the serving of brieves of heirs, or of terces of relicts, *commonly holden and reputed* is sufficient, though it be not universal;" and it cannot be disputed, that in the present case there is a full and ample proof of commonly holden and reputed.

The pursuers next appealed to *l. 1. ff. de probat. et præsumpt.* which is in these words: "Quoties quæreretur, genus vel gentem quis haberet necne, eum probare oportet."

The principle of this law goes no further, than to establish, that in every service, it is incumbent on the claimant to prove his propinquity. This the memorialist never disputed; but he contends, that it is sufficient to prove the acknowledgment of parents, or even *habite and repute*. At the same time, a great deal more was done by him in the course of his service. He not only proved, that he had been uniformly acknowledged, and that he had been *habite and repute*, but even brought a direct proof of Lady Jane's pregnancy and delivery, as above mentioned.

They also founded on the second law of the same title: "Ei incumbit probatio, qui dicit, non qui negat."

This authority makes directly against them. They have brought an action into court for depriving the memorialist of his state and birth-right, upon this ground, that he is a supposititious child, picked up some-where in France, and, according to their own doctrine, they must prove their allegation. It is true, that this is in so far a negative proposition, that if he be a supposititious child, he is *not the son of Lady Jane Douglas*; but it is a "negatio non simplex, sed circumstantiis munita," which is expressly made the foundation of their action, and therefore must be proved by them.——They offered to prove it by a variety of facts and circumstances, and your Lordships

Lordships are to judge, whether they have proved it or not. Voet, in treating of this subject of the *onus probandi*, puts the very case now under consideration, and lays down the doctrine maintained by the defender: "Sed et, si quis Titium qui pro Mevii filio habebatur, Lib. 22, tit. 3, § 10. filium Mevii esse neget, negationis suæ fidem facere debet; probata scilicet partus suppositione, aliove quo facto, quod ipsam affirmationem habens, efficit, ut pateat, negationi veritatem adesse." l. 15. in fine, ff. de præf.

From these observations it is clear, that even if the memorialist had rested his proof in the service on a general habite and repute, or acknowledgment of parents, the burden of redarguing that proof in the present action, would have been incumbent on the pursuers, much more must it lie upon them, when they have a direct proof of the birth, and the verdict of a jury, standing against them.

The next point argued by the pursuers was, that a direct or clear II. DEGREE OF PROOF NECESSARY IN THE PRESENT ACTION. proof was not necessary for establishing the crime of *partus suppositio*, but that presumptions and conjectures were sufficient. They were at great pains to assimilate the crime of *partus suppositio* to that of forgery, which, being of a dark nature and difficult investigation, seldom admitted of direct evidence, and was generally tried upon indirect circumstances and presumptive proof; and they appealed to the authority of Farinacius and others, who say, "Cum partus suppositus sit difficilis probationis, ideo probatur præsumptionibus et conjecturis." And likeways to the following text of the civil law: "Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis, testibus, scripturarum collatione, aliisque vestigiis veritatis: nec accusatori tantum quæstio incumbat, nec probationis ei tota necessitas indicatur: sed inter utramque personam sit iudex medius: nec ulla interlocutione divulget quæ sentiat, &c. L. 22. Cod. ad. leg. Cornel. de falsis."

The authority appealed to from Farinacius is doubtfully expressed, and will by no means support the pursuers in their argument.—Conjectures and presumptions are not proofs, but the consequences of proof, or of arguments arising from proof; and all that can possibly be meant by the lawyers, when they talk in the above manner is, that, in the trial of occult crimes, every kind of proof is to be admitted, and that a circumstantial evidence may be strong enough for conviction. This is by no means peculiar to the case of *partus suppositio*; for in most crimes it is difficult to obtain direct proof by the evidence of witnesses who were present at the actual commission; and therefore recourse is often had to indirect or circumstantial evidence, by a proof of such collateral facts as necessarily infer the crime:

crime: but still the evidence must be compleat *in suo genere*; and it would be ridiculous to maintain, that, because the accomplishing a *suppositio partus* requires a certain degree of concealment, therefore the detection of it will be established upon slender conjectural proofs, in contradiction to every legal presumption, and to the effect of depriving a citizen of his most valuable right.

Menochius,
lib. 5. præ-
sumpt. 24.
N. 1. 2.

Presumptions and circumstances may, no doubt, be admitted in the scale of evidence, and the judge is at liberty to weigh every argument. But those very lawyers appealed to by the pursuers, lay down this as a principle, that *partus suppositio* is a crime of that kind which is not easily to be presumed, more especially "quando qualitas personarum suadet partum non fuisse suppositum, sed vere natum ex ea muliere." In the present case the memorialist has not only every legal presumption in his favour, but has been proved by direct evidence to be the son of his reputed parents. He stands at present established in the legal and full possession of his state, as much as any other subject of the kingdom. Is it possible that he can be deprived of this state upon a conjectural or ambiguous evidence?

The law, 22. *cod. ad leg. Cornel. de falsis*, relates singly to the case of forgery of writings, which is the most occult of all crimes, as it can be perpetrated by a man in his closet, without the participation or knowledge of any other person. In the trial of this crime, so dangerous to society, and so easily executed, judges do not consider themselves as tied down to the ordinary rules of proceeding, but admit even incompetent proofs, and try every method of investigating the truth, nor will they allow the accused party to stand silent, especially if there be any appearance of fabrication on the face of the writing. This is all that is meant by the Emperor in the law above quoted. At the same time, even in the trial of forgery, when the evidence is concluded, and the cause comes before the judge for determination, the same rules of judging take place in this as in all other crimes, and no court will condemn the party accused, unless upon the whole matter there arises a legal and satisfying evidence of his guilt.

The crime of *partus suppositio*, though a species of the *crimen falsi*, does not bear the smallest resemblance to forgery. It is of all crimes known among men the most difficult to perpetrate, and the most liable to detection. Most other crimes are accomplished *in puncto temporis*, and without assistance; whereas the *crimen partus suppositi* requires a long train of progressive dissimulation, and a number of accomplices. The party who commits it is guilty of a continued crime, for months, nay, for years, together; and must be assisted by a variety of persons confederated in the plot; so that it is next to a miracle if an attempt of this kind pass, for any time, undiscovered. In the present case it is supposed, that Lady Jane Douglas began to commit this
crime

crime at Aix-la-Chapelle, in the end of 1747, or beginning of 1748; that she was guilty of it there in the face of a variety of persons to whom she was well known, down to May 1748; that she continued to commit it at Liege, at Sedan, at Reims, at Paris, and on the road to and from these places, down to her departure from France, in the end of 1749: that she was guilty of it by her behaviour and acknowledgment of the children, even after her return to this country, and persisted in it to her dying day. That, in like manner, Sir John Stewart was guilty of this long train of successive fraud, and went to death with it upon his head. That these persons were aided in the commission of this crime, during all or most of its stages, by two of their attendants, still alive, Mrs. Hewit and Mrs. Glas: and that, in the accomplishment of the principal parts of it, they were assisted by no less than two families, and various other persons; besides exposing themselves to view in inns and taverns, and in the publick streets of a large city, during the most interesting periods of the transaction. Why then should this be reckoned a matter of difficult discovery? or why should conjectures and inconclusive suspicions be admitted in evidence of it.

The doctrine pleaded for the pursuers, was founded chiefly on the authority of certain mistaken passages from an old obscure writer, Ægidius Bossius, who has been followed, because of his antiquity, by some of the later commentators, and particularly by Mascardus, though his arguments are hardly intelligible. Ægidius was a lawyer of Milan, who wrote in the time of Francis I. when the civil law had but just emerged from that barbarity and ruin under which every kind of knowledge had, for centuries, been buried.—He has favoured the world with a very inelegant treatise on different heads of the law, and particularly, on the *crimen partus suppositi*, which seems to have been suggested to him by a case of that kind, then depending before the supreme court of Milan.—The circumstances of the story are very imperfectly told by him; but so far as they can be gathered from the thread of his reasoning, it would appear to have been as follows:

The widow of Count Eleutherius Rusca was criminally accused of Cafe of Rusca; having brought in a supposititious child upon the family, whom she called Hieronymus Rusca.—In the course of this action the Countess died, but a variety of circumstances had been proved against her, which seemed to leave no doubt of the imposture, and for that reason the King took possession of the estate, until the child should come of age to follow out the process.—No person had ever seen her naked, or touched her belly, so as to judge of her pregnancy.—A covering, which she had put upon her belly to increase the size of it, happened to fall from her one day in presence of a witness, who deposed to the fact.—Her husband had been in bad health at the time of the supposed conception.—

conception.—She herself somewhat advanced in years, and, till then, without children, though she had been long married.—It was said, she was afraid of the estate's going to the fisk, in case she died childless.—Upon the day of the delivery she retired from her house in town to a private house in the country, in the coldest season of the year, where she was attended only by one maid Diamanta.—An obscure midwife, who lived in the neighbourhood, was sent for, who, upon coming, found the Countess already delivered, and a child lying on the bed.—It was proved, that, at the very hour of this delivery, a new-born child, of a person in the neighbourhood, was delivered into the hands of a friend of the Countess's.—Lastly, it was in proof, that both she herself, and her maid Diamanta, had confessed the fact extrajudicially, by a writing under their hands, and that the Countess had fled from Milan, when she understood that this confession, which she meant to intrust only to the King, was to be divulged.—This fact, with regard to her confession, and flying from justice appears from the following passage. “ Unum est quod videtur tollere omnes amaritudines, quia
“ videtur probatum *Comitissam et Diamantam confessas fuisse, quod*
“ *erat partus suppositus*, nec dicatur non stari dicto matris quod talis
“ non sit filius, secundum Bart. in L. definimus, ff. de his qui sunt sui,
“ vel alien. cur. et not. in dicto ea. per tuas. de probat. et maxime quia
“ non constat eam judicialiter dixisse : nam respondetur, quod junctis
“ prædictis, aliis conjecturis standum est, ita Alciat. in terminis in suo
“ tractat. præsumptio in reg. III. xxxvii. præsumptio. num. 9. et col.
“ sequen. et vide Bald. in d. l. filium definimus. Ubi vult quod dic-
“ tum matris cum fama sufficiat, nec est curandum, quod dictum ma-
“ tris esset extrajudicialiter prolatum, quia de hoc non curant doctores
“ in d. l. filium loquentes, quando extrajudicialiter id asserit, et etiam
“ de solo dicto matris, hic vero etiam adesse dicitur dictum Diamantæ.
“ Non obstat quod Comitissa nominaverit eum filium in fine dierum
“ suorum in suo testamento, in quo etiam eum instituit, et ita quod
“ magis est standum dicto primo et ultimo, quam medio maxime ex-
“ trajudiciali, quia respondetur solum *colligi ex processu*, in quo appa-
“ ret, quod quando detexit partum suppositum fuisse, in suo chirogra-
“ pho rogavit. D. Vicecomitem sui studiosissimum, ut dictum chiro-
“ graphum, et confessionem Diamantæ nemini revelaret, præterquam
“ Christianissimo Regi, et hoc ob honorem suum et multorum nobi-
“ lium qui deposuerant in causa pro ea, ne sic eos perderet ; unde cum
“ vellet Comitissa hæc secreto agi cum rege, non mirum, si postea vo-
“ luit perseverare in primo negatis, et quod confessa fuerit ultra hoc ;
“ quod plene constat, etiam demonstrat, effectus secutus privationis
“ commodi, possessionis bonorum feudalium. Item demonstratur, quia

“*ex processu constat, quod postquam intellexit regem noluisse ratam habere quandam conventionem factam cum D. Vicecomite, timens ipsa ne propter confessionem per eam factam caperetur, et puniretur, cum jam esset detecta, aufugit a civitate Mediolani.*”

Things were in this state when Hieronymus came of age, and claimed to be put in possession of the estate.—Another person of the family also claimed it as next heir, and this brought on the question of filiation, which the author says was still entire, notwithstanding what had been done against the mother, the conviction of the mother having only an effect quoad the interim possession, upon the edictum Carbonianum, but not as to the principal question of filiation.—The cause seems not to have been finally decided when the author wrote, for he begins with saying, *Quæstio maxima nunc pendet.* However, he gives his opinion against Hieronymus, and he has a long argument upon the ceremony of ascertaining a woman's pregnancy by the inspectio ventris, and other forms prescribed in the titles of the civil law, *de agnoscendis et alendis liberis, et de ventre inspiciendo.*

Upon these materials, and with a view to that particular case, he lays down the general doctrine, which has been followed by some of the other lawyers, that circumstances and presumptions may be admitted in the proof of *partus suppositio*. And the circumstances which they point out are: 1^{mo}, The age of the parties, if the woman be fifty years old, and the husband sixty. 2^{do}, If the woman has been long barren. 3^{tio}, If, after affirming that she was pregnant, she refused to allow *ventrem inspici, et custodiri*, and would not admit witnesses of character to be present at the birth. 4^{to}, If, at the time of her delivery, she retired from her house in town, where she might have had good assistance, and went to the country, without making any preparation for her in-lying. 5^{to}, If it appears, that a new-born child was delivered to a servant or confidant of the supposed mother. 6^{to}, If any covering or pillow was observed to fall from her belly at the time that she was said to have been pregnant. 7^{mo}, If she made no mention of her pregnancy, till a considerable time after her husband's death. 8^{vo}, If no person was present at the birth, *vel adhibita tantum muliercula vili et abiecta.* 9^{no}, If the child has no resemblance either to father or mother. 10^{mo}, Common report, that the child is supposititious. 11^{mo}, The woman not having the appearances of recent delivery. 12^{mo}, If she discover hatred of the child, or if the child behave undutifully to the supposed mother. 13^{tio}, The mother's extrajudicial confession of the fact.

It is plain, that none of these circumstances can be considered as presumptions established by the law, so as to have any general effect or operation in questions of *partus suppositio*; they are merely conjec-

ctures drawn from a particular case, which these authors had in view, and in which, no doubt, they might be considered as of weight, because there appears to have been no circumstance or presumption on the other side to diminish the force of them. Hieronymus's state was brought under trial, when an infant: he had no *tractatus* or acknowledgment in his favour, but what was contradicted by his mother's confession. When he appeared to claim the estate, the burden of proof lay in some measure upon him, and he seems to have proved nothing; whereas a concurrence of circumstances was brought in evidence against him; and particularly, his supposed mother's extrajudicial confession of the fact, and retiring from justice. Such circumstances may have had influence in that case; in the present they can have none: *first*, Because they do not in fact occur in the present case; and, *2dly*, Because if they did occur, there is such a weight of evidence, and such a variety of strong and legal presumptions in favour of the defender, that they would be greatly overbalanced.

And indeed, when these same circumstances, as stated by Bossius and others, are narrowly examined, the most of them appear to be extremely inconclusive. Menochius and Caranza, who wrote at much later periods, consider each of them in their order, and give very little weight to them.

With regard to the age of child-bearing, the defender will have occasion in the sequel to show, that this presumption does not militate against him. Menochius says in general, That a woman is to be presumed capable of generation, till she has exceeded her fiftieth year: "Et fatius est præsumere quinquagenariam peperisse, quam supponendo partum deliquisse."

Neither does the presumption of long sterility apply to the present case, Lady Jane never having been married, till within fourteen or fifteen months of her becoming pregnant; and that she was still in a capacity of having children, will be shown.—Caranza thinks it of very little moment, even where the woman has been long married: "Cum sæpissime eveniat, et experientia quotidie doceat, mulierem multis diebus, quin et annis (antea generationi ineptam) inopinato, et præter spem concipere, ut notavit Plin. lib. 7. natur. histor. cap. 13. pluribus adductis exemplis mulierum, quæ cum in juvena steriles fuissent, fœcundæ postea sunt effectæ, vel a natura, vel a medicina impedimento sublato."

The third presumption arising from the neglect of those ceremonies, called the *ventris inspectio, et custodia partus*, is equally unapplicable.—The Roman law, and likewise our ancient customs, authorised these forms in the case of repudiation, or upon the death of the husband, if required by those having interest, in order to prevent either the suppression or supposition

De præf. lib.
5. Præf. 24.
N. 10.

Cap. 5. § 2.
N. 64.

Statut. secund.
Roberti primi, cap.
27.

supposition of a birth by the wife.---They were used only, when before the birth, "*mulieri quæstio fuerat mota super partu;*" and it was in such cases only that a visitation by midwives, and under certain precautions was thought necessary; for example, that two or more of them should apply their hands at once, &c. But surely it never will be maintained, that because a woman omits a ceremony, which no woman ever dreamed of, except in the particular cases where the law required it, her pregnancy must therefore be called in question, or be said to be without proof.—Even Bossius himself does not carry the matter this length, for, after describing the several forms requisite in the above mentioned cases, he says, "*Non autem propterea impeditur, quin possit aliter per testes probari, quis mulierem esse gravidam.*"

As to the next presumption of going from the town to the country to be delivered, at a remote place, where there is no assistance, Menochius says, "*Non multum urget, cum recessus ille contingere potuerit,*" *Ibid. N 16.* "*vel mulieris imprudentia vel levitate, quo vitio earum multæ laborant.*" The very reverse however of this circumstance occurs in the present case, as it appears, that Lady Jane Douglas left a place, where the midwives were said to be unskilful, to go to a large and populous city, where the very best assistance might be had, if necessary.

The lawyers seem to think, that even the two next circumstances, viz. the delivery of a new-born child to a friend of the supposed mother, and the dropping of the pillow might admit of explanations; but, as neither of them occur in the present case, it is unnecessary to argue upon them. *Menoch. ibid. N 17, 18. Caranza ibid. N 71 and 75.*

The two next presumptions of the woman's silence for some time after her husband's death, and no person being present at or called to the delivery, except perhaps a *vilis muliercula*, are refuted by Menochius. He says, Women may for some time be uncertain of their pregnancy, it may often happen by accident, that assistance is not called in due time, and, at any rate, the negligence of the mother cannot hurt the child. And Caranza adds, that this must hold, more especially "*where no question was moved before the delivery.*" *N. 19, 20. N. 76.*

The next conjecture, drawn from want of resemblance of features, if it be of any weight, turns in favour of the memorialist, as the resemblance in this case is convincingly proved.

And as to common fame or report, it must depend on the foundation of that report, what weight is to be given to it, as we shall have occasion to observe in the sequel. Caranza thinks it a presumption of a very delicate nature, "*Facile enim esset cuicunque maledico famam notare cujusvis honestissimæ matronæ, et in vulgus spargere confictam subpositionem, eamque adsertionibus fide dignorum, et ad credendum facilius, comprobare.*" *Ibid. N. 79.*

The

The next conjecture, taken from the situation and appearances of the mother, do not aid the pursuers in this case, as will be afterwards explained, far less does the circumstance of hatred or dislike between the mother and child.

Menoch. ibid.
N. 23, &c.
Caranza ibid.
N. 58.

And, lastly, though the confession of the mother is no doubt a strong presumption of her guilt, yet even this circumstance is treated by most lawyers as inconclusive against the child, because, whatever weight the acknowledgment of parents may have in favour of their children, it is not in their power by any contrary declaration to hurt them.

Menoch. ibid.
N. 25, &c.
Caranza ibid.
N. 90, &c.

If indeed we were to suppose the whole or most of the above circumstances, to appear in any case, without being taken off by contrary presumptions or circumstances, they might have weight in a question of *partus suppositus*; but the lawyers, who treat of them, conclude always with this express caveat, that as they are merely conjectures, and not proofs, they may be elided and entirely taken off by stronger contrary circumstances. And the circumstances of this kind, mentioned by Menochius and Caranza, are, imo, If no impulsive cause can be assigned for committing the crime, “*Suppositi partus præsumptio excluditur, cum nulla datur, aut invenitur causa eum subponendi*; fere semper enim subpositio partus ob causam fit, eamque magnam.—2do, The probity and good character of the mother. 3tio, If she showed no apprehension of standing trial for it.—And, lastly, if the child has been long in possession of his state, *quando diu perseveravit in quasi-possessione filiationis*.

Tit. de reo
confess. et de
convic. quest.
86 et 33.

The memorialist will have occasion to show, that the whole of these exculpatory circumstances apply in the strongest manner to the present case, besides a variety of others not here mentioned, and even direct proofs of the pregnancy and birth. All that he means at present to insist in is, that even the authors founded on by the pursuers, though they point out a number of circumstances which may be of use in proving *suppositio partus*, do by no means establish these as infallible presumptions;—on the contrary, they treat them as weak and inconclusive.—Farinacius, and all the lawyers, who say, that circumstances or presumptions are to be admitted in the trial of occult crimes, add this express qualification, that they will not be sufficient for conviction, “*Si præsumptiones et indicia non sint indubitata—indicia ita certa ut vix denegari sufficiant—præsumptiones urgentissimæ—non solum validæ, sed a jure approbatæ, &c.*”—Neither is there any difference in this respect, between actions pursued *in civilem*, or *in criminalem effectum*.—Farinacius lays it down, that in the civil action, as well as in the criminal, “*præsumptio debet esse violenta*.” And, in another place, in talking of the presumptions necessary in the detection of occult crimes, he says, “*Adhuc tamen et hoc intelligendum esset, dummodo*

Ibid N. 69.
and confil. lib.
1. confil. 58.
N. 4.

"dummodo præsumptiones et conjecturæ sint non solum verisimiles et probabiles, sed etiam urgentissimæ et violentissimæ, ita quod rem patentem et indubitatam ante oculos judicis ponerent."—A presumption or conjecture, which amounts only to a probability, is never sufficient for condemnation. Menoch. lib. 1. quæst. 94. N. 4.

Another rule laid down by lawyers, and founded in reason, is, that these conjectures, or *præsumptiones hominis*, drawn from the circumstances of a case, must always yield to the presumptions of law, which the law itself introduces and authorizes: "Nam judicis præsumptiones, cujuscunque naturæ sint, non tollunt legis præsumptionem, sed illi cedunt; cum legis præsumptio dicatur vehementior præsumptione hominis, ita respondit Decia, respons. 12, N. 23, Vol. I. Quod dicit fuisse de mente, Bal. in rubr. de præsumpt. N. 2, et hominis præsumptiones possunt esse fallaces, cum ex variis hominum opinionibus et moribus oriantur, et ideo dicuntur præsumptiones tantummodo probabiles, seu verisimiles: legis autem præsumptiones dicuntur violentæ, ut inquit idem Baldus, &c." Masc. N. 3. concl. 1227. N. 4.

The doctrine, therefore, of the civil law, has been totally mistaken and misapplied by the pursuers.—It amounts to no more than this, that in proving the crime of *partus suppositio*, circumstantial evidence will be admitted; but these circumstances must be conclusive, leaving no room to doubt in the mind of the judge, and necessarily inferring the truth of that fact which is the object of proof.

They are equally mistaken when they argue, that acknowledgment of parents, and long possession of a state, are of no avail in questions of *partus suppositio*.—The contrary doctrine is laid down by the authors above quoted, and is founded in express texts of the civil law, "Grande præjudicium affert pro filio confessio patris," § 1. ff. de agnosc. et alend. liberis. "Etiam matris professio filiorum recipitur, sed et avi recipienda est," l. 16. ff. de probat.

Possession is in every case held to be legal, till the contrary be proved, and, in questions of filiation, if it were not to avail, the longer a man has been in possession, the more insecure would be his right.—In the Roman law, so much regard was had to possession, that besides the vicennial prescription which took place in the accusation of *partus suppositus*, as in other crimes, no person's state could be called in question after five years from his death, upon any pretence whatever; tit. ff. de statu defunctorum.—And upon the like principle, with us, services of heirs cannot be challenged after twenty years. Matth. de crim. lib. 48. tit. 19. et 2. 4. Peres. ad cod. lib. 9. tit. 22. et 18.

Such being the general doctrines of the civil law; and of our own, in matters of filiation, the memorialist shall now take the liberty of stating some authorities and cases from the law of France, which will have weight with your Lordships in a question not depending on any local or municipal custom,

custom, but on those great and general principles of justice, which obtain in all civilized nations.—The forms of proceeding in France, with respect to *criminal* jurisdiction, are, in some instances, not entirely agreeable to our ideas, but their jurisprudence, in civil matters, has a remarkable affinity to our own, being founded, in the same way with ours, partly on the Roman law, and partly on the feudal system.

Questions concerning the state of men have occurred oftner in France, than perhaps in any other country whatever, and certain rules have been established in the practice of their courts, founded on expediency and reason, according to which these questions are uniformly decided.—The two great circumstances which govern the decision of all such cases in France, are the possession which the person has had of his state, and his name being entered or not in the record of baptism.

By an ordonnance in 1539, registers of baptism are appointed in each parish, which are to be held as full evidence of the birth and age of the persons recorded in them.—By another ordonnance in 1579, these registers are again appointed to be kept under certain regulations, for births, marriages, and burials, “to avoid any proof by witnesses” in these matters.—They are further confirmed by the ordonnance 1667, which says, that these registers shall be received in justice, as full proof of age, marriage, and time of decease.—It appoints the record of baptism to mention the day of the birth, the child’s name, and the names of the father, mother, godfather and godmother, and to be signed by the father, godfather and godmother.

These ordonnances seem at first sight to establish the baptismal record only as a proof of the age or existence of a person, but it is held as an established point, and has been often decided in the parliament of Paris, that this record is also of great weight in proving the state or filiation of any person who is recorded in it, as the child of certain parents therein named.—Accordingly, the declaration of the King in 1736, which establishes a variety of regulations with respect to the manner of keeping this register, proceeds on a narrative in these words: “Ce seroit inutilement que les loix, attentives à l’intérêt commun des familles, et au bon ordre de la société, auroient voulu que les preuves de l’état des hommes fussent assurées par des actes authentiques, si elles ne veilloient pas avec une égale attention à la conservation des mêmes actes.”

In all questions therefore concerning a person’s state, great regard is paid in France to an extract from the record of baptism, bearing him to be the son of those persons, whose child he supposes himself to be. This is called the *title* of his filiation, and is looked upon as an authentic

authentick written proof, as it never is presumed, that any person, who is not really the father, would venture this publick registration, and they reckon it of great importance, that the state of men should be fixed by some document or other.

A still greater regard is paid to possession of a state.—If a person has been treated, educated, and brought up, perhaps to the age of manhood, as the child of certain parents, such possession fixes him to be their child without any necessity on his part to produce either *éxtrait baptistaire*, or any other proof of his filiation. Where the two concur, *i. e.* both the baptismal act, and possession conform to it, for any number of years, no proof of the contrary is ever admitted in France.—It is only where there is a contradiction between the record and possession, or some defect in one or other of them, that any such dispute ever arises in France.

This doctrine is elegantly explained by Cochin, the most celebrated of all the French lawyers, who, in one of his pleadings on a question of filiation expresses himself as follows: Vol. 4. p. 344.

“ By these two kinds of proof is the state of mankind ascertained. The memorialist has taken the liberty of translating this passage, but the original will be found in the appendix.

“ That of *publick possession* is the most ancient and least exposed to error, that of *publick registers* the most modern and authentick.—When these, by concurrence, give mutual aid to each other, every doubt disappears.—When disunited and at variance, the decision of the case must depend on its foundation in truth, and the circumstances attending it.—A person is either attacked in a state which he possesses, or he lays claim to one he never enjoyed. In the first case, possession alone serves for a defence; there is no need to have recourse to publick monuments, nor to any other kind of proof; he *possesses*, and upon that title alone must be maintained in his right.—In the second case, one pretending to a state which he never enjoyed, finds that same possession an obstacle to his claim, and can never succeed in his attempt, unless by solemn titles produced in his favour, he can prove that passion and injustice had deprived him of his true state.—Thus, publick possession, sole arbitress of state before the establishment of publick records, always maintains her pre-eminence.—From thence, the most striking and decisive proofs of man's condition are derived, and if possession can be got the better of by contrary proof, it is only when such proof rests upon a solid foundation acknowledged by the law, that is to say, upon the most authentick and respectable titles.—From these truths, dictated by reason, and by her as it were wrote on the hearts of men, a consequence arises which must ever be kept in view by the judge.—It is, that no serious question can be moved concerning the state of a citizen, when titles and possession are at one,

“ one, whether these proofs unite to confirm that state when attempt-
 “ ed to be taken away, or join in excluding one from a state to which
 “ he aspires.—This truth manifests itself equally in two different
 “ suppositions, which may be formed——*First hypothesis.* A man
 “ by his act of baptism is declared the son of such a father and mo-
 “ ther; he has been always educated as their son and made known
 “ for such; if any one should attempt to call his state in question
 “ would he be listened to?—He would have at once to combat both the
 “ proof resulting from publick records, and those derived from posses-
 “ sion. In vain would he specify facts, and offer to prove them, he
 “ must necessarily sink under the weight of those two united proofs.—
 “ *Second hypothesis.* A citizen demands admittance into a family as
 “ descended of it; to instruct his right he has no aid from publick
 “ archives, and has not the advantage of possession. Opposed by
 “ these invincible barriers, let him condescend upon facts, let him of-
 “ fer to prove them, such means of obtaining his end would be re-
 “ jected in every court of justice, as unknown in law, and destructive
 “ to society.—The reason is obvious—The two kinds of proof destin-
 “ ed to fix the condition of mankind, uniting either to confirm the
 “ state of the person disquieted, or to exclude one who claims a diffe-
 “ rent state, every other proof becomes necessarily unavailing—The
 “ law of nature has given a sanction to that proof which is founded
 “ on publick possession; civil institution and sound policy have
 “ established that proof which depends on publick registers;
 “ the authority of these concurring proofs is impregnable, pa-
 “ role testimony is neither of sufficient weight, nor of a proper cha-
 “ racter to oppose to them.—Twenty witnesses who should say,
 “ you have been baptised as the daughter of such a man and
 “ such a woman; you have always lived, you have always acted as
 “ the daughter of these parents; and nevertheless you are not their
 “ child; another mother brought you forth, and of course you must
 “ be drove from the rank which you have held from the moment of
 “ your birth. Such witnesses would make no impression in justice;
 “ their testimony would be despised, and would only pass for an odi-
 “ ous imposture; otherways no man for an instant could be sure of
 “ his state, having only for his protection the publick registers and
 “ possession.—In the same way, twenty witnesses who should say,
 “ The publick registers do not bear that you are the offspring
 “ of such a man and such a woman; you have never been brought
 “ up nor known as their child; you never bore their name; you
 “ never held their rank:—no matter, we certify and we depose,
 “ that you are the fruits of their marriage, and must be introduced
 “ into their family. These witnesses, in such a case, not only would
 “ obtain no credit in justice, but they would be heard with indigna-
 “ tion,

“ tion, their evidence standing contradicted by the concurrence of those
 “ proofs to which law, both natural and political, gives its sanction,
 “ and the weight of which must necessarily bear them down.---Let us
 “ conclude then, that, when one has in his favour the authority of pu-
 “ blick records joined to possession, he enjoys a state impossible to be
 “ shaken ; and that, for the same reason, when one cannot produce ei-
 “ ther one or other of these proofs for him ; the attempt which he makes
 “ to arrogate to himself a state he has never enjoyed, can only turn
 “ to the confusion of those who engage in so rash an enterprise.”

In another passage he says : “ Parole proof is exceedingly dangerous, if Page 352.
 “ admitted in favour of such as have neither title nor possession to found
 “ on.—The state of man, that invaluable property, which makes as it
 “ were a part of ourselves, and to which we are attached by the most
 “ sacred ties, would be no longer fixed. We should see it every day
 “ exposed to the most unaccountable revolutions. A man who enjoys an
 “ illustrious name and distinguished rank, would be with precipitation
 “ hurried, if I may be allowed the expression, into annihilation ; a
 “ proof by witnesses would be undertaken that he is not descended of
 “ the father and mother who have been given him in his baptismal
 “ act, and who have brought him up publicly as their child.—Facts
 “ might easily be imagined, and cloathed with the appearance of pro-
 “ bability.—A great house, it would be said, was on the point of be-
 “ coming extinct ; recourse has been had to fiction to continue the re-
 “ presentation ; a strange child has been assumed, and care has been
 “ taken to procure for him the titles, and bestow on him the posses-
 “ sion necessary to introduce him into this family. But the truth
 “ must triumph over these artifices, and it is by the testimony of wit-
 “ nesses alone that the truth can be discovered,—Thus, in the most
 “ peaceful and undisturbed possession of his state, a man might be-
 “ hold his name, his fortune, and his rank, exposed and delivered o-
 “ ver to the dangers of a proof, from its nature oftener devoted to the
 “ service of corruption and falsehood, than of truth.

In another part he says, “ The periods of conception and
 “ birth may be involved in a thousand clouds ; the passions may
 “ play a considerable part, and substitute colours in place of rea-
 “ lity. Illusion and mistake may come in for their share. But if
 “ such is the misfortune annexed to human condition, it is ne-
 “ cessary, in the unavoidable uncertainty in which we thus find
 “ ourselves plunged, to have recourse to certain fixed rules, which,
 “ for the most part, lead to truth, and which, at least, tend to
 “ preserve order and publick tranquillity, a greater blessing to soci-
 “ ety in general, than an investigation into an obscure and doubt-
 “ ful truth can possibly be to the interest of any individual.—

“ The only rule which can serve as a compass to conduct us in this
 “ tempestuous sea is *publick possession*, especially, when fortified by the
 “ authority of publick documents, the most authentick.—To quit the
 “ course which possession marks out to us, and to be led into that
 “ which parole evidence might point at, would be to run amongst
 “ shelves and rocks, where truth runs the greatest risk of being ship-
 “ wreck'd.—It becomes then the wisdom of magistracy, and the most
 “ essential interest of society, to confine ourselves to those juridical
 “ proofs, known and respected in every age, which the law has re-
 “ ceived, and which are the surest pledges of publick tranquillity.”

In fact, upon looking into the decisions of the Parliament of Paris, there is not an instance where the least encouragement was ever given to a proof by witnesses, against possession of a state, joined with the record of baptism.—The cases of this kind, which have been decided in France, are many in number, and they may be classed under two different heads: 1mo, *Suppression* of a state, when a person, by some accident or fault of his parents, is supposed to have been reduced to a different and lower state, than that which he was born to. 2do, *Supposition* of a birth, when, with a view of disappointing or imposing on some person or other, a child is said to have been surreptitiously introduced into a family to which he does not belong.—These different species coincide in many particulars, and the rules which take place in deciding them, are much the same in both.

CASES OF
SUPPRES-
SION.

Collect. de
decif. par De-
nifart, voce
Etat.

Of the first kind, a variety of cases are to be found in the *Journal des audiences*, and other French law-books.—Marie d'Amitié, who alleged that her state had been suppressed, offered to prove by witnesses alone, against the record of baptism, that she was the sister of Elizabeth and Anne Roussel—Her demand was refused, because of the dangerous consequence of admitting a fact of that kind to be proved by witnesses.

Journal des
aud. 12 Janv.
1686.

A person called Joublot, pretended to be the son of one Marsoult and his wife, but had neither *extrait baptistaire*, nor possession, in his favour: on the contrary, he had been known for thirty years under the name of Joublot. The criminal judge, before whom the cause first depended, allowed a proof by witnesses; but the Parliament of Paris found the proceeding to be irregular and null, as no parole evidence could be admitted in a case of that kind.

Journal des
aud. 19 Mars
1691.

Anne-Elizabeth Davril assumed that name in the twenty-seventh year of her age, and said she was the daughter of Pierre Davril and his wife, both then dead. She obtained a certificate from a son of the said Davril, who was a *religieux*, bearing, that she was his sister. This was not thought sufficient to admit her to a proof, as she had neither possession nor baptismal act in her favour.

A person who had been baptised as the son of John Baptiste Marin, and Mary de la Riviere, claimed to be the son of the Marquis and Marchioness de Saily.—The Marquis was dead, and the Marchioness disavowed him.—He obtained, from the inferior judge, a proof by witnesses, and he proved his allegation in a very clear and pointed manner. He even produced a letter from the Marchioness, wrote in a mysterious stile—All this could not avail him; for, by arrêt of the Parliament, 11th March 1735, the proof was found incompetent against possession, and the extract of baptism, and he was obliged to remain in the state which he had till then possessed.

Coll. de decis.
par Denifart
voce Etat,

Mary de la Salle was entered in the record of baptism, as the daughter of William de la Salle, and Antoinet Barrier his wife.—She was brought up in the family of the Marchioness de Boudeville, as the niece of one of her chambermaids—She afterwards offered to prove by witnesses, that she was the daughter of the Marchioness, and produced letters, from which it appeared, that the Marchioness had treated her in a kind and familiar manner, though not upon the footing of a daughter.—She was cast upon this ground, that her act of baptism was against her, and no possession in her favour.

Cochin, tom.
4. p. 337.
Causes celeb.
t. 17. p. 245.

In no case of this kind, was ever a proof allowed, unless where there was either some degree of possession, or something appearing on the record in favour of the claimant; or, at least, some strong and pregnant circumstance to found a presumption in his behalf.—For example, in the case of Louise de Feu, who appeared, at the age of fifteen, and demanded proofs of her being the daughter of the Sieur Toquelin, and of his wife, a proof by witnesses was allowed, upon this footing, that the register of baptism was defective, and strong circumstances already appeared in favour of the claimant.

Journ. des
aud. v. 7.
p. 690.

In the case of Demoiselle Ferrand, it appeared, that Madame Ferrand having separated from her husband upon the 29th March 1686, was some months after delivered of a female child.—The next morning, the child was sent with a servant to the church to be baptized, and the servant gave a billet to the curé, mentioning the child to be the daughter of Mr. le President Ferrand and his lady.—The curé thinking the matter suspicious, gave a name to the child, and entered it in the register, but without recording the father or mother.—This defect was supplied by the president himself, who came that same day to the curé, attended with two notaries, and represented, in a *proces verbal*, that he understood, a supposititious child was to be imposed on him, and therefore desired, that no child might be baptized in his name.—The curé, in answer, related what had already happened, and mentioned the billet, &c. all which was taken down in a notorial act, and preserved. The girl was brought up under a different name from that of

Coll. de decis.
voce Etat,
Cochin, tom.
4. p. 465.

the

the president, but she afterwards claimed her state, and was admitted to a proof of it, upon this footing, that the record of baptism was in her favour, defective indeed in appearance, but that defect supplied by the notorial act; and Madame la President, when examined, admitted, that she had been delivered of a female child at the time, which agreed with the record.

Coll. de decif.
voce Etat,
Causes celeb.
t. 6. p. 407.

The Demoiselle Choiseul was admitted to prove a state claimed by her, though she had no possession in her favour, and the record of baptism mentioned neither father nor mother; but it was upon this footing, that the defect in the record was, in some measure, supplied by the book of the man-midwife, who had delivered Madame de Choiseul. A letter of the Marchioness de Tournon, sister of Madame de Choiseul also appeared in favour of the claimant: for these reasons, a proof was allowed;—at the same time, the judges were much divided in opinion, and the *avocat general*, in stating the cause to the court (which he does as a magistrate) gave his conclusions against the proof.

See his conde-
scendance in
the Appendix.

In a case, which was only decided within these few months in the parliament of Paris, the Sieur de Rougemont, who had served with reputation in the army, and had been known, first under the name of La Riviere, from his infancy to the age of eighteen, and afterwards, by the name of Rougemont from that time to the age of forty, appeared, and offered proofs, that he was the son of one Monsieur Hatte, then dead, and his widow La dame Hatte. It appeared, that he had been baptized, as the son of Etienne de Rougemont, an officer, and of Jean Morrill, his wife, and he never had any possession of state, as the son of Mr. and Madame Hatte, though, upon entering his claim, as aforesaid, the widow Hatte acknowledged him to be her son, and interested herself keenly in his behalf. The facts, which he condescended on, were very strong and precise. His baptismal extract, as the son of Rougemont, was also said to be exceptionable, as it mentioned him to have been born in a different parish from that in which he was baptized, and was witnessed by two children, one of seven years of age, the other of eleven, who stood godfather and godmother, the father himself absent; and it was further said to be proved by the capitation-books, that no person of the name of his pretended father had then existed in the street mentioned in the act of baptism. It was answered, that as from the age of eighteen upwards, he had possessed the state and name of Rougemont, which was agreeable to his *extrait baptistaire*, he could not now be admitted to a proof, that this state was erroneous: that his act of baptism was liable to no objection from the circumstances above mentioned, and that the record of capitation was no evidence whatever of the non-existence of persons not contained in it. The pleadings on behalf of Mr. Rougemont were very elaborate, but the

the parliament thought it dangerous to depart from their rules, and therefore refused to allow a proof of the condescendance.

The force of these principles, and, particularly, the weight given to possession, appears no less remarkably, where the object in view is not to claim a new state, but to maintain an old one, against the pretence of *partus suppositio*. SUPPOSITION.

William Haroward was married in 1695, to Mary-Katharine Adam. Case of Haroward.
Of this marriage was born a son, Charles-Francis, upon the 13th ward.
September 1701, baptized on the 17th of that month in the parish- Journal des
church. In 1705, the husband being jealous of his wife offered a aud. 20 June,
plaint to the criminal judge, accusing her of adultery; and, in this 1713, V. 7.
plaint, he, among other things, affirmed, that the child entertained by suppl. p. 230.
him under the name of Charles-Francis Haroward, was supposititious; that the real Charles-Francis died of convulsions upon the 22d October 1702, in presence of sundry witnesses but that Mary Adam (from certain views which are mentioned in the case) had caused bury him privately that same night; and some time after brought in a nurse and another child into the family, which she passed for the one that was dead; that he, the husband, opposed this manœuvre, but she prevailed in keeping the child in the family, till at last he made such a noise about it, that she sent the child away to another place where it was nursed. The husband gave in several other complaints successively, complaining of his wife's irregularities, but in 1706 matters were made up between them, the complaints were passed from, and Charles-Francis received back into the family. In 1707, Madam Haroward was delivered of a second son.—The affections of both father and mother became from that time alienated from Charles-Francis, who was in December 1707 again placed at board with one Elizabeth Bence.—The father died in 1708.—The widow, after some time, discontinued paying board, and disclaimed Charles-Francis.—Elizabeth Bence, in October 1711, caused summon the widow Haroward to the Chatelet, for payment of the board.—The cause having come by appeal before the parliament, a tutor was appointed for the child, who demanded, *imo*, That the child should be maintained in his state of filiation, as the son of Haroward and his wife. *2do*, That the widow should be discharged from disposing of the effects to his prejudice.—The widow admitted that she had placed the child at board; but offered to prove the following facts: That the real Charles-Francis died, and was buried privately in November 1702, that the entry of his burial in the register was made under feigned names, somewhat similar to the real ones, viz. "Charles, son of Charles Roward, and of Mary Trouffy, his wife:" that the child now in question was the son of one Tartarin, who had been procured to her by Elizabeth Bence; that she and her husband thinking to

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have:

have no children, brought it up for some time as theirs, but afterwards having a child, gave back the false one to Elizabeth Bence, from whom they had got it. During the pendency of this suit, the widow Haroward, in order to get proofs, in an indirect manner, of the facts maintained by her, and particularly of the death of her real child, raised a criminal suit against one Crancier, accusing him of having instigated the process, and practised upon witnesses.—In this prosecution she took occasion to bring proofs by witnesses of the death of the real child, and of the alledged *suppositio partus*; and she produced the *extrait mortuaire* of Charles Roward, as above.—The principal cause afterwards came to a hearing before the parliament, when it was pleaded for Charles-Francis, that his state could not be attacked, because he not only produced an *extrait baptistaire*, as the child of Haroward and his wife, but had been entertained, and acknowledged by them and by their relations, as such, for five years together, and had always bore their name.—On the other hand, the council for the widow insisted, that there were already strong presumptions against the child, arising from the disavowal both of father and mother, and none of their relations now acknowledging him; that a strong presumption further arose from the *extrait mortuaire* of Charles Roward; that there was no established *possessio status* in this case; and further, that the actual *suppositio* was established by the parole testimony brought in the criminal suit, and again offered to be adduced in this question.—The *avocat general*, in summing up the cause, gave his opinion, that the *extrait baptistaire* and the *possessio status*, by five years acknowledgment and treatment of the parents, were sufficient; that the disavowal of the father in the plaint against his wife might have proceeded from passion, and could not hurt the child; that the state of persons ought not to depend on the caprice of fathers or mothers. He said, that, with regard to the parole proof, brought in the criminal suit, the same was irregular, and ought not to have been allowed, in that indirect manner, after the civil question had been brought into court, and that he could not listen to any parole evidence, however convincing, which ought not to have been admitted, or relating to a matter, not susceptible of such proof; that it would be of dangerous consequence to commit the state of persons to the fidelity or memory of witnesses, that the *extrait mortuaire* did not apply, either in names or date, to the supposed case of Haroward's child; and, upon the whole, he gave his conclusions, that Charles-Francis, notwithstanding the appearances that were against him, should be confirmed in possession of his state, which was accordingly done by *arret* of the parliament.

Cochin. t. I.
p. 21.
State of Viras-
sel.

Upon the 1st April 1700, the president de Virasel was married to a daughter of the president de Volufan.—On the 6th or 7th October that year, only six months after the marriage, Madame de Virasel lay-in at

a chateau in the country, and her father, who was then with her, wrote to Monf. de Virafel, that she was delivered of a dead child.—The whole family believed this to be the case, and Madame de Virafel herself died in November 1703, without having any other child.—During her life, she never said she had a living child; and, upon her death, Mr. de Virafel regreted that she had left him no child. About a month after her death, a female child appeared in the family, and was acknowledged by the president as the child, of which his wife had been brought-to-bed in 1700.—The whole collateral relations cried out against this as an imposture, and, among others, Monf. de Volufan, and the president d'Arguille, brother of Madame de Virafel.—A dispute arose concerning the mother's fucceffion, which was claimed by the collateral relations, as they infisted that Madame de Virafel had left no children.—This brought on the question of filiation, in which it was pleaded, on the part of the relations, that the child having neither *extrait baptiftaire*, nor any established *poffeffio status*, could not be fufstained to be the child of Mr. and Madame de Virafel, in opposition to the strong fufpicions that lay against her; that the acknowledgment of the father, after the mother's death, and after it had been understood, for feveral years, that there was no iffue of the marriage, could be of little effect, efpecially as all the other relations difclaimed the child.—It was further obferved, that if fhe was really the child of Madame de Virafel, the pregnancy muft have begun before marriage, and, confequently, fhe was not a lawful child.—But, notwithstanding thefe arguments, the child was maintained in poffeffion of her ftate, the fucceffion adjudged to her, and the other party condemned in expences of fuit.

A cafe is mentioned in the *dictionnaire des arrêts*, where a perfon was maintained in poffeffion of his ftate, notwithstanding the dying declaration of the midwife, who owned that fhe had not truly delivered the fupposed mother, but had procured her the new-born child of a fhoe-maker's wife. Two other cafes are mentioned in the fame book, where it was found, that the ftate of children could not be difputed, after they had been acknowledged by the family, and had been long in poffeffion.

Voce Filiation.
Voce état.
Vol. 7, fupp.
166. See alfo
v. 2, 452.
Cochin. t. 1,

Mary Pichart's mother, Sufan Renaud, was 48 years old when fhe bore her; and, though fhe had been twice married, had till then been childlefs.—Mary had no *extrait baptiftaire*, nor any direct proof of her birth, but fhe had been brought up as the lawful child of Sufan Renaud and her hufband; and was in poffeffion of filiation till they difavowed her, upon occafion of her being debauched by a footman. A competition foon after enfued about the mother's fucceffion, and Mary was maintained in her filiation, againft the other relations who difputed it with her,

573.
Cafe of Pi-
chart.
Journal des
aud. Septem-
ber 4, 1658.

her, merely because she had been in possession of that state, from her infancy upwards.

Case of Perrier.

Journal des
aud. tom. 5.
contin. p. 55.

On the 5th October 1683, a child was baptized at St. Germain en Laye, by the name of Marie-Anne daughter of John Lambert, baker at Paris, and of Mary Dubois.—The record was signed by Pierre Boutere, and Marie-Anne Bourcier, godfather and godmother, and bore, that the father was absent, and that the child had been ondoyed by the midwife.—Twenty-eight months after this period, a marriage was recorded between John Perrier and Anne Eva, bearing, That they had lived for some time together, under promise of marriage, and had a daughter twenty-eight months old, baptized at St. Germain, under the name of Anne, as their child, which they legitimated.—Upon the 9th August 1701, a baptism was recorded in Paris, of Mary Anne, born 3d October 1683, who had been ondoyed the day of her birth, and who was daughter of John Perrier and Anne Eva.—Upon the 14th November 1705, John Perrier gave in a petition to the Archbishop, setting forth the declaration he and his wife had made at their marriage, concerning their child's having been baptized at St. Germain, which declaration they then believed to be true; but having since learned, that the child had been ondoyed and not baptized, they desired that the record of their marriage might in so far be corrected.—The Archbishop having allowed a proof, both husband and wife declared positively, That their daughter had not been baptized till 9th August 1701, but only ondoyed; and four other witnesses declared, they, at different times, heard the husband and wife say so; upon which proof, the record was accordingly altered.—The curé of St. Germain also certified, that he had searched the record, and found no entry of a baptism of any daughter of Perrier.—Upon Perrier's death, which happened soon after, one Beauchamp, who was his next heir, failing the daughter, raised a process, in which he offered to prove, "That Eva the mother had lived a debauched life; that she never had been with child, nor delivered of the person called Marie-Anne Perrier; that the said Marie-Anne was the daughter of Lambert and Dubois, in whose names she had been baptized at St. Germain; and that Perrier had, for some time before his death, been deprived of his senses." At the same time the pursuer insisted, that Eva should be obliged to appear and answer the following questions: "What year was she with child? At what time? In what month? And in what house was she brought-to-bed? By whom delivered? And who was godfather and godmother? These questions she *refused* to answer; but it was argued for Marie-Anne, that her filiation was sufficiently established: *1mo*, By the act of her father and mother's marriage. *2do*, By their having constantly

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ly entertained her as their child. And, 3^{tio}, by the extract of her baptism in 1701, though 17 years after the birth.—The *avocat general*, Mr. Joly de Fleurie, said, That, notwithstanding the variations which the father and mother had fallen into, and the falsehoods they had repeatedly told, concerning the baptism of this child, yet he was for refusing the proof demanded, and gave his conclusions for sustaining the birth, upon the acknowledgment of the supposed parents, and their constant treatment and education of the child as theirs, more especially as no sufficient cause appeared, why they should have been guilty of the crime of *suppositio*. He at the same time observed, That if the child had not been really theirs, and if they had meant to commit a crime, they would have been uniform, and would not have fallen into such manifest contradictions. The child was accordingly maintained in possession of her state.

It would be tedious to enumerate all the other cases which have been decided in France upon the same principles; the memorialist shall only appeal to one other authority, which will not be disputed by the pursuers, viz. the opinion given by their own French council, upon a state of the facts laid before them in November 1762, prior to the commencement of the Tournelle action. In this opinion they set out with observing, that the state of men is of all civil rights the most important, and at the same time the most involved in obscurity; that conception, birth, and identity of persons, are facts which seldom admit of clear evidence; for which reason the law has introduced presumptions, under the salutary protection of which mankind enjoy that rank or state which has been allotted to them, without being subjected to those disputes which interest might excite. These presumptions, they say, are by the law acknowledged as proofs, and are of two kinds, viz. 1^{mo}, The possession of a state. 2^{do}, The authority of public registers. They next proceed to lay down the well known doctrine of the French law, founded on those two capital proofs of filiation, in much the same terms with Cochin, in the passage above recited; and they seem in general to admit, that possession of a state, with the baptismal extract, are of themselves compleat evidence in questions concerning the state of citizens.—It is true, that, after having established this general doctrine, they endeavour to cavil at the particular nature and degree of *possessio status* which occurs in favour of the memorialist, and they also make some objections to his extract of baptism. But the memorialist will have occasion in the sequel, when he enters upon the proof, to state more particularly the facts contained in this memorial and opinion, and to show, that the agents who composed the memorial, and the council who gave their opinion upon

it, were totally deceived in their facts, and that the objections made by them, both to the *possessio status* and the *extrait baptistaire*, were founded on absolute misinformation. At present it is enough to say, that their own French council admit the general doctrine now pleaded for the defender.

From these authorities, therefore, your Lordships will have a sufficient notion of the French jurisprudence, in matters of filiation; and, had such questions been as frequent in this country, it is not to be doubted, that the justice and expediency of their principles would have equally established them in our practice. It is true, the register of baptism does not obtain so much faith with us; but, in the first place, it will be considered, that you are here judging of a birth which happened in France, and of a baptism recorded in France, where these registers are considered as authentick proofs. 2dly, Considering it in no other light, than as a publick document of the acknowledgment of parents, and of the possession of a state, there can be no doubt, that acknowledgment and possession, are proofs of filiation, which must every where obtain, because they are founded in nature, in expediency, and in the security and honour of families. And if so, there can be as little doubt, that the solemn act of baptizing a child, and the publick document taken thereon, by putting his name in the register, must be an additional presumption of filiation in all countries, where baptism is in use, or records are established. Even in the civil law, mention is made of the *tabulæ natales*, and *professio natalium*; and it is certain, that among the Romans, they had publick registers of births, and containing the names and families of their citizens, to which recourse was had in the *causæ liberales*, and other questions concerning the state of persons.—It appears from Julius Capitolinus, that a record of this kind was ordered by Marcus Antoninus, to be kept in the Temple of Saturn, chiefly with a view to questions concerning the state of citizens.

L. 13. et l.
16. ff. de
probationibus,
l. 6. cod. de
fide instrumen-
torum.

In vita Marc.
Anton. § 9.

It is true, it is said in l. 5. c. de testament. “ Neque professio, neque
“ adseveratio nuncupantium filios qui non sunt, veritati præjudicat;”
and in like manner, l. 14. c. de probat. says, “ Non nudis adsevera-
“ tionibus, nec eumentita professione (licet utrique consentiant) sed
“ matrimonio legitimo concepti, vel adoptione solenni filii civili jure
“ patri constituuntur. Si itaque hunc, contra quem supplicas, alie-
“ num esse (probare) confidis; per te, vel per procuratorem adfirma-
“ tionem ejus falsam detege.” But the obvious meaning of these
laws is, that the *professio natalium*, was not of itself *probatio probata* of
filiation, so as to exclude all proof of the contrary.—That it was a le-
gal presumption, however, in favour of the child, is clear from the
expression used by the Emperor, in the last of the above laws, “ Si
“ alienum

"alienum esse probare confidis, adfirmationem ejus falsam detege." and so the matter is explained by Caranza, and other authors who treat on this subject. The *l. 16. ff. de probat.* expressly says, that even the *professio* of the mother or grandfather, was of avail to the child. At the same time, if the child was otherwise in possession of his state, the want of the *natalis professio* was not sufficient to deprive him of it, *l. 6. c. de fide instrument.* and *l. 9. c. de nuptiis*; so that, on the one hand, the *professio natalium* was a strong presumption, though not irrefragable proof in his favour; and, on the other hand, possession, without it, was a sufficient protection, till contrary proof appeared against him; and the only difference to be observed between the civil law and the law of France, in this matter, is, that the one allowed a proof against both the *natalium professio* and possession; whereas, the other holds the two, when combined, to be full evidence, and rejects all contrary proof.

It is remarkable, that in Great Britain, hardly one instance is to be met with, of a question of *partus suppositio*, similar to those which have so often happened in France, and other countries.—In the kingdom of Ireland, however, a very noted instance, not long ago, occurred, of the favour attending even the lowest degree of possession of a state, in questions of this kind.—Arthur Lord Altham (brother of the Earl of Anglesea) and his Lady had been a good many years married without having children.—In 1714, Lady Altham was said to have had a miscarriage, and, in April 1715, she was said to have been delivered of a son, James Annesley, at a house belonging to Lord Altham in the country.—The child was baptised in the family by a priest, and given out to a woman in the neighbourhood to be nursed.—He was for some time acknowledged by Lord and Lady Altham, and treated as their lawful child, and Lord Altham continued to acknowledge him, even for some time after a separation which happened between him and his Lady, when the child was sixteen months old.—At last, however, Lord Altham took up with a woman called Gregory, whom he took into his family as his kept-mistress, and by her means it happened, that the boy, when eight years old, was abandoned and disavowed by Lord Altham, who affirmed that he was not his lawful son, but a bastard begot by him upon one of his servant-maids.—The plaintiff, from that time, was obliged to earn his bread by service, as a livery-boy, and, in the 1727, Lord Altham having died, his younger brother entered to possession of his estate, as supposed to be the next heir, and afterwards succeeded also to his eldest brother Lord Anglesea, who died childless; and though Lady Altham was alive, she never offered any objection on behalf of her son, nor took the least notice of him. The boy was soon after kidnapped, and sent to the West Indies, at the instigation

stigation of his uncle. There he remained for fourteen years, at the end of which he returned to Ireland, and claimed the succession of his father, and of his deceased uncle Lord Anglesea.—He was opposed by the then Lord Anglesea, and the matter came to a proof of that fact, whether he was the son of Lady Altham or not?—One witness swore to the miscarriage in 1714.—The appearance of pregnancy was proved by four or five witnesses, one of whom, a servant-maid, swore, that she had put her hands upon Lady Altham's belly, above the cloaths, and found her with child.—One witness swore, that he was the person who went for the midwife; one witness, that she was present at the birth; one witness, that she carried some water into the room immediately after the birth, to wash the child.—It was proved, that the plaintiff had been put out to nurse, and acknowledged and entertained for some time in manner above mentioned.—But the priest, who was said to have baptised the child, was dead; no record of baptism kept; Mrs. Heath, who had been Lady Altham's principal servant at the time, and waited on her person, the butler, Lord Altham's principal servant, two other men servants, all concurred in swearing, that Lady Altham had no child to their knowledge, and that, if there had been a child in the case, they certainly would have known of it.—Mrs. Heath also contradicted both the pregnancy and miscarriage.—An attempt was made to prove, that Lady Altham was not at her country-house, but in Dublin, at the time of the supposed delivery.—Many witnesses swore, that the plaintiff was really a bastard by one of the servants.—It appeared that a great many of Lord Altham's neighbours had visited in the family, without hearing any thing of the child, and many persons heard him regret, that he had no lawful child.—Upon this proof, the jury declared the plaintiff to be the son of Lord Altham.

If these authorities and precedents are at all to be regarded, and if the common rules of evidence are to be observed, Mr. Douglas's fate cannot be uncertain. Every circumstance conspires to render his case the most favourable of the kind, that in any age or in any country has been tried, and every species of testimony appears in his behalf, which the nature of such a question can possibly admit of. He is singular in this respect, that he rests not only upon legal presumptions, which in other countries are held as compleat proofs, but upon direct evidence, and a verdict in his favour, which, in all countries, must be held *pro veritate*, till at least it be set aside by the most infallible evidence.

The pursuers entertained the court with certain instances of *partus suppositio*, which had been decided in different countries, and where the imposture had been discovered.—The memorialist never pretended to say, that the crime of *partus suppositio* could not in nature exist, or that

that the detection of it was impossible. He admits, that instances have happened, both in ancient and in modern times, of this species of fraud; and he will go a little further, and maintain, that it is hardly possible for such a crime to be committed, without being one time or other ascertained by the most satisfying evidence. The accomplishment of such a long and continued train of guilt, is in its nature so difficult, and the necessary participation of such a number of witnesses, renders the discovery so unavoidable, that the instances must be few or none, of such an attempt having ever passed without the clearest detection.—When the cases founded on by the pursuers are looked into, it will be found, that there is not one of them which proves any thing further than this, that it is *possible* for the crime of *partus suppositio* to be committed, and when committed, to be fully detected,—positions which it would be absurd in the memorialist to dispute, though he must be allowed to observe, that the most of the cases appealed to by the pursuers, are of such a nature, and attended with such circumstances, that they not only are in every particular different from the present, but it is highly injurious to mention them in a cause of such grave and important consideration.

The case of Rusca, from Ægidius Bossius has already been explained. Case of Rusca
The fact was there ascertained by the extrajudicial confession of the supposed mother and her chief accomplice; by their flying from justice; by a direct proof of simulated pregnancy, and by many other strong evidences above pointed out. Yet, notwithstanding these unfavourable circumstances, and though the young man, whose state was disputed, had not a single presumption in his favour, except what arose from a temporary acknowledgment of the mother, contradicted by her confession; it appears from the case, as stated in Bossius, that the process depended for many years, and was attended with much difficulty and doubt, nor is it clear from that author, at what time, or if ever it was finally ended.

The case of St. Vidal, as stated by Henrys, was next quoted as an instance of a person having been declared supposititious, after he had possessed his state for above twenty years, and it was said, the process lasted forty years. Case of St. Vidal, Henrys, tom. 2. lib. 6. quest. 21.
The memorialist hopes the pursuers will not again found on this case, without publishing the account of it given by Henrys, together with the arrêt of the parliament, from which your Lordships will have an opportunity of judging, how far it can be of any aid to them in the present question. The arrêt contains such a long enumeration of the steps of proceeding, and is so full of technical expressions, particular to the law of France, that it is extremely difficult to be understood; but this much is certain, that neither in the arrêt itself, nor in the short account prefixed to it by Henrys,

is there any detail of the circumstances on which the cause was decided. It appears only in general, that a person called St. Vidal, having lost his only son, named Gilbert, at the age of six or seven years, and being desirous of disappointing a younger brother, who was his next heir, borrowed the son of another person, called Julian, whose name he changed to Gilbert, but upon his death, left his estate to his wife, with power to her, to leave it either to the said person whom he called his son, or to a grandchild by his daughter.—The widow, who probably knew or suspected the imposture, made a will in favour of the grandchild; but Gilbert demanded the succession, which brought on the question of filiation; and it appears, that this happened while he was still under age, as tutors were appointed to him by the court. Gilbert died during the process, after having instituted the Viscount de Polignac as his heir, who carried on the process, and continued the claim made by the deceased, until, upon proofs taken, it was found that he was supposititious. Neither the duration of the process, nor of Gilbert's possession of that state, nor any one circumstance of the proof is mentioned; and as he appears to have been assumed, when he was a boy six or seven years old, after having been so long possessed of another state, it is to be presumed, that the cause would turn entirely on a question of identity, Whether this person was Julian or Gilbert, and the proof would, in all probability, be extremely clear, and attended with no difficulty.

Cafe of Pitard.
Henrys tom.
2d, lib. 6th,
quest. 19th.

Another case stated by Henrys was appealed to, but, with what propriety, your Lordships will judge from the following account of it, as taken from that author.—René Pitard died on the 1st July 1632, without children.—His heirs proceeded to inventory his effects, and his widow, after some disputes between her and the heirs, was allowed to assist on that occasion. After this was over, and about three weeks from the death of her husband, she, for the first time, declared, that she was with child, and protested, that nothing she had done in concert with the heirs should hurt her child.—The heirs immediately applied to the judge-ordinary of Mayenne, insisting that she was not with child, and that she should be obliged to appear, in order to be examined upon it in judgment. She, on the other hand, demanded, that the affair should be remitted to the Chatelet. This was refused, and she was ordained to appear, and the affair remained on this footing for two months, when the widow having gone to Paris, summoned the heirs, in order that tutors might be named to the child *in utero*, for whose behoof she also demanded possession of her husband's estate. The heirs, on the 19th October, gave in a petition, insisting that the pregnancy was feigned, and desiring that she might be obliged to fix on some place to live in, and that she should be inspected

ed by midwives, and examined upon the time and circumstances of her pregnancy. The widow refused to submit to an examination.— Upon the 26th October, she was ordained to undergo this examination and inspection by midwives, and to fix on the place where she should be visited, and reside. On the 4th November she appealed to the parliament, refused to obey the order for inspection, and in this way matters stood till the 7th February 1633, when she caused intimation to her husband's heirs, that she was brought-to-bed of a daughter. This intimation, however, was not made till about three weeks after the supposed delivery. Next day, the heirs made intimation to her, that they were to insist against her for the crime of *supposition*, and demanded that she should name the time of her delivery, the place where, and the witnesses present; and they soon after presented a petition, craving to be maintained in possession of the estate, and to be allowed a proof of the supposition.—On the other hand, the widow, as mother and guardian of the child, demanded possession of the estate.—While matters were in this situation before the parliament, the procurator-fiscal of Gentilly brought a complaint before the judge of that place, setting forth, that Madame Pitard, attended by a servant, and by a man unknown, had come to a house there, pretending to be with child, and had supposed a delivery, but, in reality, had caused a new-born child to be brought to her, which she had carried off. A variety of witnesses were accordingly examined, from whose oaths the above facts appeared, and that the neighbourhood in general believed the child to be supposititious. On the other hand, the midwife and people of the house declared, that she had been brought-to-bed of a daughter the 20th January, and she had a certificate of this fact from the midwife. Some of the witnesses against her were also said to have been practised on.—The procedure at Gentilly was put a stop to by the parliament as incompetent, and the cause having come to a hearing, the widow insisted in her request to be put in possession for the child, who could not be hurt by her refusing to submit to the examination or inspection ordered by the judge, or to condescend on a place of residence, &c. She having done all this, from the fear of being ill used by her husband's heirs.—But Mr. Talon, *Procureur-general*, gave his conclusions against putting her in possession, the whole circumstances of her conduct being extremely suspicious.—At the same time he said, that the state of the child, which was likewise called in doubt, ought not to be determined without further proofs. He therefore gave it as his opinion, that the heirs should be allowed to bring their proof of the *partus suppositio*, and that, in the mean time, the child should be taken from the widow, and put under the care of some neutral person until the process should be concluded. From the arrêt, of date 23d July 1633,

1633, it appears, that the parliament, agreeable to the conclusions of Mr. Talon, rejected the appeal of the widow, and maintained the heirs in possession ; but, as to the question of *partus suppositio*, in so far as concerned the interest of the child, it does not appear what was done. At the same time it will be extremely obvious to your Lordships, that, had a judgment been pronounced, declaring the child supposititious, this would not in any shape have contradicted the principles of the French law, as above explained.—The state of the child was brought under challenge even before its birth.—The conduct of the mother, in refusing to submit to the regulations established in such cases, and the other strong circumstances above set forth, were sufficient to throw the presumption both against her and the child, and there was neither *possessio status* nor *extrait baptistaire* in the case.

Case of Bourdeloue.

The next case mentioned was that of *Bourdeloue*, taken from the *recueilles des arrêts notables*, par *Boniface*, and it was said, that this woman had a method of feigning pregnancy, by which she deceived even her husband ; that she was no less than twice guilty of the crime of supposition ; and that the first time she was accused she had the evidence of four positive witnesses in her favour, who declared they saw the child come out of her body.—The circumstances of the proof, on which the woman in this case was convicted, are not stated by *Boniface*, and therefore it does not occur what use can be made of it. All that appears is, that the *Sieur de Bourdeloue* being charged with a *fideicomiss*. in favour of his two sisters, failing issue of himself, his wife, who had conceived a dislike at the sisters, pretended to be with child, and, with the assistance of the two midwives, had a child introduced to her, which she gave out as her own. The husband caused baptise the child as his, but one of the sisters having suspected the fraud, refused to be present ; and, in a day or two after, application was made by the sisters to the *Lieutenant de Marseille*, who having gone to *Bourdeloue's* house, in order to examine his wife, was refused admittance, but the door being broke up, he entered the house, and found the lady sitting in her bed with the child on her knee. Having put some questions to her, she said she was the mother of that child, named the midwife who had delivered her, and four other persons who had been witnesses to the delivery, all of whom supported her story, by saying they were present and saw her delivered. It does not appear that these examinations were on oath, that there was any inspection or any further proceeding at that time. But the true mother of the child, who, it seems, had been deceived by the two midwives, having offered a plaint against them to the criminal judge for the crime of *suppression*, the two midwives, as well as the mother herself, and all the accomplices, fled from the place before they could be apprehended.

ed. But one of the midwives having been overtaken and imprisoned, confessed the fact when examined in judgment. The husband, when examined, said he believed his wife had been truly delivered, and dying a short time after, he left her his heir.—All this happened within a few weeks of the pretended birth, and it appears that the child was afterwards declared supposititious, but the particulars of the proof are not stated, though in all probability it was clear and direct. The real mother would have no difficulty of proving the child to be her's, and there was no *possessio status*, as the child of *Bourdeloue*.—The pretended mother had fled from justice, one of the midwives confessed the fact, and it is probable that the other accomplices were also at last seized and brought to a confession. In a question, which afterwards happened about the dowry and other claims which the widow had against her husband's heirs, it was disputed, whether the imposture was committed with or without the concurrence of the husband, the widow insisting that he did know of it, and the heirs, that he was ignorant; so that the fact, with regard to her imposing on the husband, is by no means ascertained.

The same woman having afterwards been married to another husband, aged seventy, it appears that she and her husband were accused of the crime of having stole a child from an hospital, and *supposed* it as theirs. Neither the proof, proceedings, nor any one circumstance of the case is mentioned, further than that by an arrêt 16th July 1677, the woman was condemned to perpetual banishment.

From the next case mentioned, viz. that of Piquet, in 1730, nothing earthly appears, except that a woman, the widow of one Piquet, was condemned for the crime of *supposition*.—The extract from the registers of the parliament, appealed to as evidence of this case, contains neither proof nor recital of the circumstances.—It would appear that the woman had committed this fraud after the death of her husband, with a view of disappointing his next heirs.—But the crime having been immediately detected, and clearly proved, the woman was condemned, and the child ordered to be put into the *enfants trouvés*, till the real mother should be found.—This extract contains indeed a requête in the name of Madame Piquet, and another, in the name of a woman who had been apprehended and imprisoned, as an accomplice in the crime, and who was suspected of being the real mother, both of which requêtes appear to have been given in, subsequent to the condemnation, and set forth certain facts and circumstances offered to be proved in exculpation, such as, that Madame Piquet had, during her pregnancy, appeared before the lieutenant of police, who was satisfied of her being with child; that she had still some appearances of a woman recently delivered, and milk in her breasts, though a little discoloured by the anxiety and distress occasioned by her imprisonment;

Case of Piquet.

prisonment; that some of the witnesses against her were perjured, &c. But it would seem that the fact had been so clearly proved against her, that the judges paid no regard to the facts set forth in this requête, which were merely her own allegation, without any proof, and, in all probability, were already refuted by the proof on which she had been condemned; and, besides, according to the jurisprudence of France, in criminal matters, proofs in exculpation are never allowed.

Case of Giou,
Collect. de
decis. voce
Part.

The case of Giou, mentioned in Denifart's collection, seems to have been equally clear. The woman Giou having long been married, and being uneasy that she had no children, made a bargain with her sister, who had too many, to assume one of her's. Accordingly, in the absence of her husband, she feigned a delivery, and produced a new-born child of the sister's, as her own; but the midwife, who was at first in the plot, took a check of conscience, and immediately discovered the whole affair. No other circumstances are told, except that the imposture was clearly detected.

Case of the
Dutchess of
Rohan.

Another instance was appealed to on the evidence of Moreri's Dictionary, voce *Tancrede*, viz. that of the Dutchess of Rohan, who having conceived a pique at her daughter, for marrying against her will, acknowledged a person called Tancrede as her lawful son by the Duke of Rohan. The imposture is said to have been challenged by the relations, and declared by an arrêt of the parliament of Paris in 1646. No particulars, however, of the proof, are related by Moreri; and, upon looking into the Diction. des arrêts, voce *Supposition*, it appears that the cause was deserted by the Dutchess and her pretended son, so that the decision went of course, and all that is said is, that Tancrede was prohibited from taking the name and arms of the house of Rohan, under certain penalties. It appears that the young man had been bred a shop-keeper, before he was acknowledged by the Dutchess, and that this happened at the distance of seven years from the husband's death. Patrou and Gaultier, the council for the heirs, appear to have treated the cause with contempt. Their pleadings are very short, and do not enter into circumstances.

Case of Van-
der-mark,
Huber præ-
lect. ad tit. de
agnosco, et
ad. lib.
sect. 4.

The case quoted from Huber is equally inapplicable.—Christina, the wife of Van-der-mark, had deceived her husband, by saying, that she was delivered at Utrecht when he was in Friesland, and he acknowledged the child as his. Upon Van-der-mark's death, however, the child's state was contested, and tho' the delivery was proved by a midwife, and some witnesses, it was, on the other hand, proved by the midwife's husband, that she had been corrupted to give her evidence by a considerable bribe; and from the record of baptism it appeared, that the child had been baptised as the son of another woman, a relation of Christina's, and who lived in the same house. Christina herself was convicted of falsehood in another particular, and was known

to

to be a woman of bad fame, and had never, indeed, been married to Van-der-mark, though he treated her as his wife. The whole of these reasons conspired against the child ; not only the bad character of the woman, but the express testimony of witnesses, and the faith due to publick records, and judgment was accordingly pronounced against him. The words of the author are these : “ Ipsa Christina falsi aliunde convicta, nec boni moris *ευγνωστός*, cum hæc ratio, tum fides testium, et baptisterii publicum imprimis monumentum, fecit ut curia filium pro subditio habuerit, atque ab hæreditate excluderet.” And this case he mentions, not as an instance of presumptive proof, “ sed probationis inartificialis per *testes et instrumenta*.”

Another case, taken from Caranza, is still less to the purpose. The author, in treating of the question, whether accomplices may be admitted as witnesses, observes, that the easiest and most direct way of proving *partus suppositio*, is by the evidence of those who were accomplices, or privy to the fraud, attended with other strong presumptions or circumstances ; at the same time, he thinks it *may* be proved otherwise than by accomplices ; for example, says he, I remember a case, where an imposture of this kind was detected on the evidence entirely of indifferent witnesses, some of whom swore to the mother's extrajudicial confession, others, that she was advanced in years, others, that she had no milk in her breasts, and others, that they saw an old woman bringing in a new-born child, and heard the child cry, and many other circumstances of the same kind ; which, says the author, is a clear proof that this crime may be otherwise established than by the evidence of accomplices.—A position which the memorialist has no occasion to dispute.

The case of Steincke Hedowig Bullen, the wife of a Dutch peasant, is highly ridiculous, not to say, injurious, when applied to the present question. In harvest 1724, she became with child, and supposed that she was to lie-in about the middle of May following. In that belief she caused prayers to be said for her, took the sacrament, and her condition was well known in the neighbourhood. She continued gradually advancing in her pregnancy, till about a fortnight after the time she had reckoned on for her delivery, when her belly seemed to decrease in size, and she began to apprehend she had been in a mistake. Fearing the jokes and sarcasms of her neighbours, (the like having happened to an acquaintance some time before) she made an agreement with a common woman, who was near her time, to assume the child which she should bring forth, and in this view took the woman into her house, hid her in a garret when she was in labour, and having got the child from her, went to bed with it, sent for her husband and the midwife, and, when they came, told them she had been already delivered, and shewed the child. She took care that the midwife should not come too near her ; and thus both husband and midwife supposed the

Case in Caranza.

Cap. 5. sect. 14. N. 46.

Case of Steincke Bullen.

Halderici disert. de superfoetatione.

the birth to be real. Some days after all this, Steincke began to perceive motions in her belly; she found she was really with child, and in a short time was actually delivered. This was considered by the physicians, and other learned men of the place, as a very curious instance of superfœtation, till at last the real mother of the first child discovered the whole story, and a process was commenced against Steincke, who did not pretend to deny the fact, but pleaded in defence, that there was neither *dolus* nor *damnum* in the case, which were essentially requisite to constitute the crime;—no *dolus*, because there was no bad intention, the motive being to prevent the vexatious remarks of her neighbours; and no damage, because her husband not only forgave, but interceded for her. The *facultas juridica* of Kiel being consulted on this knotty point, returned for answer, that she should be simply acquitted. The court, however, pronounced another sentence, condemning her to a slight punishment.

Case of Camillus.

Socinus junior, consil. 90.

A case was next mentioned from Socinus junior, but which, when considered, will not aid the pursuers. The decision is not mentioned by the author, nor is the proof fully stated, as he appears only to have been consulted on one particular point, viz. How far reiterated confessions of the mother were sufficiently proved by single witnesses? The circumstances however, as they appear in the course of his reasoning, were shortly these: Julia, after the death of her husband, Camillus, of the city of Pisaurum, made no mention of her being with child for seven months and a half, and in the mean time had disputes with the brothers of Camillus, and allowed them to be put in possession of her husband's effects, as his heirs. She had been married for many years without having children, and her husband knew nothing of her being with child when he died. At last, she gave out that she was pregnant; but when required to undergo the usual forms of *ventris inspectio, et custodia partus*, she shifted from place to place, and never would submit to the inspection; and, at one particular time, she shut herself up in a house which was uninhabited, on account of the plague, imagining, that no person would venture to come near her. At another time, she left the town of Pisaurum altogether, and went to another place, in order to avoid the search of her friends, who did not know where to find her. At last, at the distance of *ten months* from the death of her husband, she made her appearance at a villa, where she pretended to be in labour, and sent the only woman who was with her, to call assistance; but, upon the woman's return, she produced a boy, of whom she said she was already delivered. No person whatever was present at the time of the delivery. Two persons, with whom Julia had bargained for finding her a child, afterwards deposed to the fact. The daughter and son-in-law of the very woman who procured her the child, deposed also to this fact by hear-say from her. A man employed by Julia,

Julia, and who had given money to the woman who procured the child, acknowledged that he had done so. The child bore no resemblance to the supposed father or mother, and he was universally believed to be supposititious. Lastly, it appeared, that at different times she had confessed the fact extrajudicially, to one single person at a time; and particularly, that she had made a formal confession of it to her priest upon death-bed, *ad exonerandam conscientiam*; and the question on which Socinus appears to have been consulted was, Whether a single witness, deposing to each of these confessions, was sufficient proof, that in general she had confessed? The author is of opinion, for the reasons mentioned by him, that this proof by single witnesses, of reiterated acts of confession, was sufficient; and, after much argument, he thinks, there is sufficient ground for refusing to admit the child to possession of the estate, and even for declaring him supposititious. In what manner judgment was given does not appear; but it cannot make in favour of the pursuers, that there should have been so much hesitation and doubt in a case, where the circumstances were so clear, and no proof whatever in favour of the child.

Another case is mentioned by Philippus Decius, in which he appears also to have been consulted on this point, Whether the direct testimony of two witnesses of character, who had assisted in the imposture, viz. the two daughters of the Lady who committed it, were a sufficient ground for prosecuting the action? No other circumstances of the case are related, nor does it appear what judgment was given, but the author is at great pains to establish, that the depositions of these two direct witnesses, deposing *de facto proprio*, were a sufficient foundation for the action, though they were originally accomplices in the crime; and, in order to prove his point, he carries the argument so far, as to insist, that *suppositio partus* cannot otherwise be proved, than by those who were privy to the fraud: “Et certe negari non potest, quin iste actus supponendi partum fit de illis casibus in quibus alii qui non sunt participes criminis non admittuntur: et ideo ab illis participibus hoc delictum probari potest, ut dictum est.” How far the pursuers can avail themselves of this doctrine, your Lordships will judge.

Reference was also made to the case of Chetwynd, tried in the courts of Chancery and King's Bench in England, in 1754 and 1755, of which the following is a true account. Walter Chetwynd, a gentleman of considerable estate, died in June 1750. He had for several years cohabited with one Katharine Paris, a very low woman, who had been a common prostitute, and who could neither read nor write. In the course of this intimacy, Mr. Chetwynd had declared, that if he had

a child by her, he would settle handsomely both on the mother and child. In summer 1749 she fell with child, and communicated her pregnancy to Mr. Chetwynd, who went to the country soon after, and remained till March 1750. In February 1750, Katharine was seized with the measles and miscarried. She was afraid to inform her lover of this accident, and therefore caused her maid write him a letter, signifying, that she was safely delivered, and other letters were wrote to him from time to time, demanding money for the child. Mr. Chetwynd, on his return to London, desired to see the child, and she at first said he was in the country; but afterwards having applied to one Joice Perce to procure her a child, which she might show to Mr. Chetwynd as her's; the said Perce got one Stevens, a poor woman, who had a young male child, to bring it to Katharine Paris's lodging, where the child was dressed in proper cloaths, and shown to the gentleman, who caressed it, and gave money to Stevens, believing her to be the nurse. He was soon after taken ill, and when on death-bed, executed a settlement, whereby, he conveyed one of his estates, of about 1000 l. *per annum*, to trustees for behoof of the child, which he believed to be his son by Katharine Paris. He left an annuity to her of 200 l. a year, and a legacy of 500 l.—The heirs of Mr. Chetwynd suspecting the fraud from the character of the mother, made enquiry into it, and discovered the whole affair by the confession of the servant-maid who had wrote the letters. Katharine Paris upon being sent for also confessed the fact, and only excused herself by saying, that she was afraid to tell Mr. Chetwynd of her miscarriage, lest he should abandon her, which was the reason why she had passed this child on him for her's. Stevens and his wife and Joice Perce were likewise examined, and they all concurred in the same story, so that there could not be a doubt of the imposture; the proof being positive and clear, and not so much as the pretence of evidence in favour of the child. To mention such a case, as having any resemblance to the present cause, is highly indecent and improper.

It was said, that the heirs of Mr. Chetwynd had published a reward in the news-papers, to any person who should discover the fraud. The memorialist does not know how this fact stands.—If any such thing was done, it must have been before the action was raised, and can bear no resemblance to the *monitoire*. An advertisement offering a reward for the detection of a crime, may be published in such a way, and conceived in such terms, as to be perfectly unexceptionable; but no instance can be given of a narration, such as the *monitoire*, published either in this country or in England, concerning any action depending in court, without the severest reprehension.

The

The pursuers also founded on an attempt of this kind, said to have happened in our own country in the year 1747, but the connection of which with the present case is not extremely obvious. The process against Lady Kinnaird before the Commissaries of Edinburgh, was brought with a view, not so much of detecting an imposture already committed, as to prevent one from taking place which was only suspected.—It had been given out, that this Lady, originally a low woman, and who had taken offence at her husband's heir, was to produce children, with a view of disappointing the heir. A process was immediately instituted against her by the heir, concluding, that she should undergo an inspection, and should condescend on the time and place of delivery, that it might appear, whether there was any fraud in the case or not, and, that, upon her failing to submit to this visitation, or to condescend on particulars, any children to be thereafter produced by her should be declared supposititious.—In order to found the pursuer in this demand, he examined some witnesses, in an exhibition for recovering a letter, in order to prove the intention of supposing children.—This being done, Lord and Lady Kinnaird were, in the next place, to have been interrogated, upon questions given in by the pursuer, and a fine was imposed on them for not appearing to undergo that examination; but the process never went further. The intention of it was to prove, that Lady Kinnaird, then said to have been recently delivered, was not in fact delivered. She refused to undergo any examination or inspection; she did not even appear, or say that she had been delivered of children; no child or children were ever produced, or shown to any person as her's; the question of *partus suppositio* was never tried, and though it had been tried, must in every circumstance have been extremely different from the present.

The only other instance mentioned was that of Seton, which likewise happened in Scotland about the year 1740.—Dr. John Murray had made a settlement of his estate in favour of Mr. Gideon Murray; “whom failing, to Murray Seton, eldest lawful son procreate of the marriage between Patrick Seton, merchant in Edinburgh, and Elizabeth Wood, his spouse,” and burdened the first institute with a legacy of 500 l. to the said Murray Seton. Some time after the Doctor's death, his heir, Mr. Gideon Murray, raised an action before the Court of Session, subsuming, that no such person ever existed as Murray Seton, procreated of the marriage between Patrick Seton and Elizabeth Wood; and therefore concluding that the legacy and settlement upon him should be declared void. Patrick Seton and his wife having been called on as defenders in this action, to declare how the fact stood, and whether they had any such child or not, did honestly confess that no such child had ever existed of the marriage; and Seton having been imprisoned by

Case of Murray Seton.

by order of the court, did further acknowledge, in a petition presented by him, that he had been guilty of a fraud in pretending to the Doctor that he had a son named Murray, after the Doctor, and that this son was in Ireland.—This he said he had done, in order to gratify the Doctor, who was his wife's relation, and from whom he expected a legacy. He expressed his sorrow and penitence for the lie he had been guilty of, and prayed that he might be liberated from prison.—The court found him liable in expences to the pursuer, fined him in 101. Sterling, and condemned him to six weeks imprisonment. They at the same time reduced the deeds executed in favour of Murray Seton.—It is submitted how far any argument can be drawn from this case to aid the pursuers in the present question.

Indeed, the only conclusion to be drawn from all of the instances adduced for the pursuers is, that frauds of this kind *may* be committed, and when committed, are by their nature so liable to detection, that they seldom or never escape without being discovered and clearly ascertained.—This is a conclusion, which, so far from aiding the pursuers, makes directly against them.—Will your Lordships, in determining upon a fact, which, by its nature, and in the ordinary course of human affairs, admits of being established by incontrovertible evidence, adopt suspicions and uncertain conjectures, in place of that legal and satisfying proof, which has always, in such cases, been the foundation of judgment?—Actual delivery, and real filiation, are often attended with obscurity, and are, for the most part, unattended with that degree of positive evidence, which, from the importance of them, might be wished for; but, on the other hand, the imposture of a fictitious birth, is, of all frauds under the sun, the most susceptible of direct proof; and therefore, in every age, and in every civilized country, the established rule of law, founded in reason, and in the clearest expediency, has been, that a person attacked in the possession of his state, especially if at any distance of time from his birth, is to be maintained in that possession upon simple presumptions, though he should have no direct proof in his favour; whereas, to deprive him of his state, requires proof the most certain and most infallible. It has been shown, that in France this principle is carried so great a length, that proofs are with difficulty, if ever, allowed, against the legal presumptions. And indeed, such is the favour in that country attending filiation, that, in a case mentioned in the *dictionn. des arrêts*, voce *Supposition*, a child was maintained in possession of her state upon simple presumptions, even against the dying declaration of her father, and the living testimony of her mother, both disowning her as their child.

In this country your Lordships, in most cases, admit proof before answer, but the relevancy and strength of that proof are open to your consideration when brought; and in a question of such infinite importance as that of the state of a citizen, the heir of a noble and ancient family, who stands legally possessed of his right, who has arrived to the age of manhood under that character, and who not only has legal presumptions, but direct evidence in his favour; you certainly will not allow all these considerations to be overbalanced by a weak, conjectural or equivocal proof of a fraud, more especially a fraud of that nature, which, if it has any real foundation, admits of the most downright and positive evidence.

The memorialist comes now to the *proof*; and though the order ^{P R O O F.} commonly observed is, in the first place, to state and consider the pursuers proof, and next to subjoin the evidence brought for the defender, ^{Arrangement of it.} yet, in the circumstances of the present case, it will be more distinct to begin with the defender's proof, which contains the evidence arising either from the service, or proofs lately brought in support of his birth; in stating which there will be occasion at the same time to notice such objections made on the part of the pursuers as seem to arise from, or to have an immediate connexion with the different branches of the memorialist's proof; and he shall, in the last place, consider and obviate certain detached or separate articles of proof also founded on by the pursuers.

The memorialist's proof admits of a threefold division, corresponding to the nature of the different facts, circumstances and presumptions which appear in his behalf. 1. He will endeavour to show, that the birth is in this case established by *direct* evidence of the delivery and condition of Lady Jane Douglas. 2. This direct evidence is strongly corroborated by a chain of *circumstantial* proof, agreeing in every material particular with the accounts uniformly given of the birth. 3. The filiation of the memorialist is established by every kind of *presumptive* proof known in the law of this or of any other country.

The direct proof of any person's birth arises from the testimony of witnesses swearing from their own knowledge or observation, to the condition of the mother, before, at the time of, and subsequent to the delivery. The time of delivery is indeed the critical period; and two or more credible witnesses deposing to their actual presence on that occasion, might supersede all further enquiry or proof.—But this is a species of testimony, which, at any distance of time, is seldom to be obtained; and Providence has not left the evidence of so material a fact depending altogether on the witnesses present. Certain well known

marks are stamped on the condition of child-bearing, which, as they are progressive, and easily discernible, admit of a variety of proofs.—Under this head, therefore, of the direct proof, the memorialist will avail himself of those natural appearances and known symptoms which constantly attend human birth.—And he will show, 1. That Lady Jane Douglas was capable of having children. 2. That she was pregnant during the ordinary time.—3. That she was delivered of children.—4. That, after her in-lying, she had the usual appearances of weakness and gradual recovery.

1. CAPA,
CITY OF
HAVING
CHILDREN.

To prove that a woman was in condition to have children, who actually became pregnant and was delivered, may seem unnecessary; but, as Lady Jane Douglas's age, at the time, is taken hold of as an argument by itself, against the truth of the birth, the memorialist is desirous, that your Lordships, independent of any actual proof of her being the mother of children, should be satisfied, that it was natural for her to be so, and that no objection lay on account of her age.—This, he apprehends, will appear from the known and established marks of *capacity* in women, compared with the proof which has been brought with regard to Lady Jane; and it will even appear, that she was with child at a time subsequent to her delivery of the defender.

The distinguishing characteristick of ability to have children is as follows: "Principium et finis mulieribus prolificandi, est menstruorum emissio."

Aristot. lib. 7. de historia animal. cap. 7. Rod. à castro, p. 46. "Propterea vero menstrua foeminis, et non viris contingunt, quia mulier ad procreandos liberos facta est, quorum generatio atque nutritio fieri non potest absque alimento."

Hoffman, v. 5. p. 318. "Non vero omnibus subjectis foemininis profluunt menses, sed tantum generationi aptis.—Interdum hic fluxus differtur ad annum 20 et 24 et ultra, interdum durat ultra 50."

Mauriceau, tom. 1. p. 49. "It is destined by nature, "Pour servir de matière à la génération de l'enfant, et à sa nourriture, durant qu'il est au ventre de la mere."

Astruc says, it continues often to 50 or 55. Lamottte says, from 45 to 50, and sometimes to 54, and mentions a woman, who, by the time she was 45 years of age, had 32 children.—She continued in the condition of having them till the age of 61, when she died. Hildanus mentions a woman who was in that condition to the age of 78. In the memoirs of the academy of sciences, an account is given of a woman aged 83, who was married to a man of 94, and produced a child at the full time.

Haller,

Haller, one of the latest, and most eminent of all the physical writers says, "Circa quinquagesimum annum menses omnino feminas ^{Physiolog. lib. 28. sect. 3. §. 2.} fa-
 "nas deferunt, & una *fecunditas*. Celerius autem, ut nubiles fiunt,
 "ita sterilesunt calidarum regionum foeminae, et cum steriles fiant,
 "credas una menses amittere, uti contra, in frigidis serius menses
 "emanent. Quæ tamen non ita sunt firma, quin passim aliquæ foe-
 "minæ secundo supra 50mum anno, aut tertio, quarto, quinto, &c.
 "menstruo sanguine se liberarint." He further says, "Earum aliquæ
 "perpetuos menses, ad eam ætatem passæ sunt. Aliis secunda quasi
 "juventa contigit, ut post longam suppressionem menses redirent, an-
 "no ætatis 55, 68, &c." And he adds, "Cum mensibus serotinis
 "etiam *fecunditas* fere redit."

Hundreds of instances might be adduced, of women delivered in this country long after the age of fifty.—It is unnecessary to particularise them, as they must have occurred in every one's observation.—It is a point agreed on by all physical writers, that, as long as a woman is in the condition above described, she may have children, and in cold climates, the capacity, as well as the reasons of it, are later of beginning, and continue longer, than in warm or more temperate countries. Lady Jane Douglas was only in the 49th year of her age when she became with child, it will be shown that she still retained the natural ability of having children, and therefore the circumstance of her age can afford no argument against her.

In the late pleading, a very new doctrine was advanced by one of the council for the pursuers: he seemed to admit, that a woman of forty-nine or fifty might have single children, and that instances of this kind had sometimes happened; but he affirmed, that no instance had ever been known since the deluge, of a woman of that age bearing twins. This distinction is not founded in nature, and it is contradicted by the experience and observation of the whole world.

Haller says in general, that instances of women having children, are not infrequent even at the age of 60; "In regionibus frigidis, ^{p. 142.}
 "uti serotini menses, ita diu durant, et quinquagesimo, et sexagesi-
 "mo anno pueros non infrequenter aluisse visæ sunt. In Orcadibus
 "foemina peperit 63 anno." In another passage he says, "Peperisse ^{p. 142.}
 "visæ sunt foeminae anno 54, 58, 60, 63, 70, et inter consanguineas
 "meas fuit Patritia matrona, cujus duo filii post quinquagesimum
 "matris annum nati, in senatum adlecti, supervivunt dum hæc
 "scribo."

It is very true, that fewer instances happen of *twins* produced by women at the age of fifty, than of single children; but the same thing holds with regard to women of all ages. The chance of bearing a single child is much greater than of having twins; but it is not great-

er at one age than at another.---The proportion of single children to twins is the same, whatever be the age of the mother; nor does nature furnish the least reason why there should be a difference. The *conception* of twins is not more unnatural in an old woman than in a young woman, provided both are equally in condition to have children; and the *nourishment and birth* of twins, after they are conceived, is not attended with more inconvenience to the mother than the production of a single child. The reason of this is explained by Roederer, in his Elements of Midwifery, in the following words: "Quoiqu'il y ait deux fœtus dans la matrice, la nourriture
 " qu'elle leur fournit n'est pas plus abondante, car le sang ne se porte
 " pas dans ce viscere, et dans les fœtus, en plus grande quantité, que
 " lorsqu'il ne contient qu'un seul enfant. Aussi ne se dilate-t-il pas
 " davantage. C'est ce qui fait que les jumeaux sont plus petits et moins
 " pèsans que le fœtus dont la femme accouche dans un autre tems.
 " Ils le sont souvent même encore plus lorsqu'ils naissent avant terme.
 " Un fœtus né à terme, pèse presque autant que deux jumeaux. On
 " n'a point à craindre dans l'accouchement des jumeaux les accidens
 " qu'occasionne la grosseur excessive du fœtus.—Il est même plus
 " doux et moins douloureux que l'accouchement simple, lorsque l'ac-
 " coucheur a soin de prévenir les descentes de matrice."

In fact it is certain, that hundreds of instances have happened in every part of Europe of women past the age of fifty producing twins; though, as this was a matter never called in doubt by the pursuers, either in their condescendance, or in their pleadings on the relevancy, or upon any other occasion, prior to the late pleading, it was thought unnecessary to enquire into particular instances, or bring them into the proof.—Authors who treat on these subjects make no distinction between twins and single children. The doctrine laid down by them in general is, that as long as a woman is in the state above described, she may have issue. This the memorialist has already shown from the best writers on physick and midwifery; and he hopes he may be permitted also to found on the living testimony of gentlemen now in practice, and of known ability, in those professions. They were applied to in consequence of the doubt suggested in the pleading; and their opinion, which is subjoined in the appendix, is precise and satisfying on this point. Two questions were put to them, 1st, Whether a woman, who was in the condition above mentioned, at the age of fifty, might have children?—2. If they knew any reason why a woman of fifty, who was in that condition, might not have twins as well as one child?—The answer to the first is, That a woman, though she is fifty years of age, may have children, if she is in the above condition. 2do, "We know no reason why a woman of 50 years of age may
 " not

"not have twins as well as one child."—(Signed) Dav. Clerk, Adam Austin, Thomas Young, Robert Smith.

The memorialist has already mentioned the reason why no proof was brought upon this head, nor any enquiry made into particular instances. He did not think it necessary to bring evidence of a fact which was notorious, and was not disputed; nor does he think himself yet bound to enter into a proof of particular instances. To render such an enquiry compleat, would require time and investigation. The experience of the world in general, is a sufficient proof upon this head; and if news-papers, magazines, and other such periodical records, are to be trusted, the delivery of twins, or even of more children than two, by women at very advanced ages, is an occurrence which very usually happens. But, in short, it is enough to say, that if a woman is at all in the condition of having children, there is nothing in the human œconomy which renders it in the least degree unnatural for her to have twins at the age of fifty.

Since therefore it is an established point, that Lady Jane Douglas's age was no obstacle to her having children, provided she was still in the condition above described, which nature has rendered necessary for propagation; it only remains to satisfy your Lordships, on this head of the proof, that she was still possessed of that natural ability, down to a period later than the birth of her children. A variety of witnesses, who had particular access to know her condition, not only before her marriage, but during the time she was abroad, and after her return to this country, have deposed to it in very distinct terms.

Helen Ferguson depones, "That she washed Lady Jane's linens Def. pr. 386.
 "when she was living at Drumsheugh, and for many years before,
 "and that she was informed, about the time that the Highlanders
 "were here, and thinks it was about that time she left this country,
 "that she was married to Sir John Stewart, and that this matter was
 "then kept very quiet, though she heard it before Lady Jane went
 "abroad. Depones, that when Lady Jane returned to this country,
 "she was still employed to wash her linens, and continued to do so
 "until her death. Depones, that both before Lady Jane went abroad,
 "and after her return to this country, her cloaths had all the marks
 "or symptoms, which the cloaths of a woman in the way of having
 "children commonly have, from which she concluded, that she was
 "still in the way of having children."

Def. pr. 385.
G.

Doctor Eccles, who attended Lady Jane as her physician, before she went abroad in 1746, concurs with Helen Ferguson as to that period, by saying, that he was told in the family of her having the above symptom about that time, "which made it improper for her to take medicines till that was over, from whence it may be presumed, that women in that situation may have children; but that the deponent was not informed of the above circumstance relative to Lady Jane, by herself, as ladies seldom talk on such subjects, and Lady Jane was particularly delicate in such matters."

p. 59, B.
and 61, E.

Madame Mayette, in whose house Lady Jane Douglas and her family lived at Reims, after their return from Paris in August 1748, "Dépose qu'elle a des raisons pour croire que Madame Stewart, pendant son séjour chez elle déposante, pouvoit avoir des enfans, parce qu'un arbre qui porte des fleurs, peut porter des fruits.—Qu'elle a remarqué que Madame Stewart, avoit la maladie périodique de son sexe, en la voyant s'habiller, et qu'elle a fait cette remarque deux ou trois fois différentes, et qu'elle en est bien sûre."

Purf. pr. 344.
E.

Jean Greig depones, "That she thinks she entered into Lady Jane's service in the month of May or June 1751, and continued till after the middle of October thereafter, during which time Lady Jane was at London and the neighbourhood. Depones, that during that time, Lady Jane had all the symptoms attending women in the way of having children, all the time the deponent attended her, so far as the deponent ever knew these symptoms."

Def. pr. 386.

Mrs. Maitland depones, "That when Lady Jane Douglas came to Scotland with her children, she came first to the deponent's house, where she took lodgings, and remained for some time, but does not remember how long, but thinks it was some months. Depones, she had occasion to see Lady Jane and her children almost every day during the time they staid at the deponent's house; and that Lady Jane was a fond indulgent mother; and that she never saw any parent exceed her in that respect; that her son Sholto was as like her in every respect, as ever a son was like a mother; but that, notwithstanding this, she appeared to the deponent, to be always rather fonder of her son Archie.—Depones, that when Lady Jane staid in her, the deponent's, house, she also lived and slept in the house, as she thinks, for the most part; and that, in her opinion, Lady Jane had then the symptoms attending women in the way of having children. And
"upon

" upon the pursuers interrogatory, declines to give any particular
 " cause of knowledge, but that she has particular reasons for being
 " of the above opinion, though she does not chuse to mention
 " them."

Margaret Brown depones, " That she was servant to Helen Fer- Def. pr. 387.
 " guson, a preceeding witness when Lady Jane Douglas came to
 " Scotland with her children, and that, at that time, she assisted
 " in washing Lady Jane's cloaths. Depones, that Lady Jane's
 " cloaths had then the marks or symptoms, which the cloaths of
 " women in the way of having children commonly have, and that
 " they had these marks till a little before her death; that from
 " this the deponent concluded, that, after Lady Jane returned to
 " Scotland, and till a little before her death, she was in the way
 " of having children." And Janet Andrew, who was servant to
 Lady Jane while in the house of Mrs. Maitland, and continued
 with her to the time of her death, depones, " That when Lady P. 387.
 " Jane was in Mrs. Maitland's house, and afterwards, when in
 " her own house, till about a fortnight before her death, the de-
 " ponent believed she was in the way of having children," and
 this she deposes from very particular causes of knowledge men-
 tioned by her, and in which, from the constant access she had to
 Lady Jane's person, and to see her linens, &c. she could be under
 no mistake.

Thus the fact is clearly ascertained, that Lady Jane was, even
 to a later period than the delivery, of that constitution and habit, Serv. p. 9.
 which rendered her capable of having children. At the same time, D.
 had she been fat and overgrown, or, had she been married very Purf. pr. 339.
 young, and had a number of children, the chance would not L.
 perhaps have been so much in her favour; but neither of these Def. pr. 499.
 was the case of Lady Jane, she was married for the first time D.
 only in August 1746, and it is in proof, by the depositions of 385. E.
 doctor Eccles, and a variety of other witnesses, that she was re-
 markably genteel, well-made, and graceful, in so much, that
 she had the appearance of being much younger than she was in
 reality.

But what puts it beyond doubt, that Lady Jane was in the way of
 having children, is the miscarriage which she had at Reims in the
 end of the 1748, subsequent to the delivery. This fact, though en- MISCAR-
 deavoured to be called in question by the pursuers, is fully ascertain- RIAGE.
 ed by written, as well as parole evidence. Mrs. Hewit gives an ac-
 count of it to Mrs. Hepburn of Keith, in a letter of date 21st Decem-
 ber 1748, in these words:

" My

Service, p.
33.

“ My dear Madem,

Decemb. 21, 1748.

“ Yow may very justly think me most onkind in being so long of
“ writing, but after hearing me yow will think I have had too good
“ reason. Forst, I have been ill this fix weeks with my old trouble the
“ gout, as the Coll. calls it; so that I never was able to go out. And
“ yow must know, my dr. Madem, to add to my troble, Lady Jane is
“ been ill these three weeks, tho’ now, blist be God, she is pretty
“ well, but very weak. Yow must know she was in as good a way as
“ yow and I coud a wist, the matter of ten weeks; and my Lady Wig-
“ ton being ell, and taking medicens, obligd her to go oft to see her;
“ and coming home, her foot slipt, and, to save herself from falling,
“ wrampst her back, and did not tell me when she came home, or I
“ wold had her bled derictly—and the next day she fell ell with a
“ witnes, which is quite brock my heart. And I am pretty sure will
“ make yow very forryfull, and all that wishes her well and her fa-
“ mily. I cannot help saying to yow, I wish Lady Wigton had been
“ a hundred milles aff;—oh! how oft have I wisht yow and your
“ family in her place! how happy shoud we a been; tho’ I must own
“ she is a gay body.—My Lady and the Cole joins me in wishen Mr.
“ Hepburn and yow joy in the appearance of your being a Grand-
“ mother likewise in your daughter-in-law. May all happiness at-
“ tend yow all, and a good husband to Ms. Anny, who is a great
“ favurete of Lady Jane’s and mine. I know you will be fond to
“ know how our dear lambs are; Archy is the lovelyest creature
“ iver was seen, and every week we get better and better accounts
“ of letell dr Sholto. Archy had a letell teething-brash, and, what
“ was pretty odd, Sholto had it at the same time; but as yet none
“ of them is got out any teeth. Now, as you cannot well trip it
“ down in a winter’s evening, I expect a long letter. Lady Jane and
“ the Cole gives ther most affectionate compliments to Mr. Hep-
“ burn and yow, Ms Anny. I do most sincerely the same, and am,
“ my dr. Madem, your most affectionate hnmble servint, Helen
“ Hewitt.”

The stile of this letter is natural, and must have been the compo-
sition of Mrs. Hewitt herself. It is difficult to figure that there could be
any view of imposing on Mrs. Hepburn, to make her believe in a
miscarriage which did not exist. It will be observed too, that, accord-
ing to this letter, the accident must have happened either in the end of
November, or very early in December, after Lady Jane had been about

ten

ten weeks gone with child; which agrees with the account of it given by the witnesses.

Isobel Walker depones, "That Lady Jane and Sir John, upon their ^{Serv. 21, B.} return to Reims from Paris, lodged in the house of Mrs. Mayette, a widow in rue de Cualote; that about three or four months after Lady Jane's return to Reims," (*i. e.* three or four months after the middle of August) "she parted with child; the occasion of which was, that, in going to make a visit to Lady Wigton, she made a false step, and, in attempting to save herself from a fall, wrampted her back, came home very ill, and continued so for some time; during which the deponent attended her, and that it was a good while before she got the better of it."—And, in her deposition in the cause, she says, "That Lady Jane had recovered pretty much her former ^{Def. pr. 367, G.} looks, before she parted with child at the time mentioned in the deponent's deposition in the service. And being interrogate further, if the deponent had access to know how long Lady Jane had been with child before her parting with it at Reims, depones, that she cannot be positive as to the precise time, but that it was about two months, and under three. Being further interrogate for the pursuers, depones, that the conception, of which Lady Jane miscarried, the deponent had access to see, as the person that was most about her, but that it was not formed into any shape or body, so as to be distinguishable, and that Lady Jane never had any other miscarriage while she was abroad, so far as the deponent knows; and thinks, if there had been any, she must have known of it, by her being constantly about her: that after this miscarriage, Lady Jane was confined to her room for some time, but cannot recollect how long; but minds it was two or three weeks before she recovered her strength, and that Lady Jane was some days confined to her bed on that occasion; and that Lady Jane on all occasions was a person who did not chuse to lie in bed if she was able to rise. Depones, that it was her, the deponent, that shifted Lady Jane and her bed, and carried away the conception of which she miscarried, and thinks that Mrs. Hewit may have seen it, but does not remember whether any of the other persons in the house saw it or not, for that there was no formed conception of a child to be seen; but that if she were talking to any woman, she would explain the matter more particularly."

Mrs. Greig depones, that she came with Lady Wigton to Reims in August or September 1748, and that she had frequent occasion to see Lady Jane: "That the deponent thought, towards the beginning of ^{Serv. 16, G.} winter, that Lady Jane was again with child; that she talked of it with Mrs. Hewit and Tibby Walker, who were of the same mind;

“ that she spoke of it likewise to Lady Jane, who blushed, but did
 “ not refuse it; that one day, when Lady Jane came to visit Lady
 “ Wigton, her foot slipped, and she strained her back, endeavouring
 “ to save herself from a fall; and after she came into Lady Wig-
 “ ton’s she appeared to be uneasy, and complained of a pain in her
 “ back, and the deponent gave her a cordial, and sent her home in a
 “ chair; and that after she went home she was ill for some days; and
 “ Mrs. Hewit and Tibby Walker told the deponent that Lady Jane
 “ had parted with child.”

Serv. 28, B.

Lady Wigton depones, “ That she continued at Reims till about the
 “ month of February 1749, when she went to Paris; that Lady Jane
 “ and Sir John continued at Reims all that time; that some time be-
 “ fore the deponent left Reims, she heard that Lady Jane had parted
 “ with child; that the deponent was told so by Mrs. Greig, her own
 “ woman, who was sent by the deponent to enquire after Lady Jane’s
 “ health, as she had not seen Lady Jane for some days, and had heard
 “ that she was ill; that Mrs. Greig, upon returning from that mes-
 “ sage, told the deponent, that she had been informed, as the depo-
 “ nent thinks, by Mrs. Hewit, that Lady Jane, in walking home from
 “ the last visit she had made the deponent, had accidentally slipped her
 “ foot, or made a false step on the street, which had hurt her, and
 “ occasioned her miscarrying; that at this time the deponent was in-
 “ disposed, and she did not see Lady Jane for some time thereafter,
 “ but does not remember how long.”—Miss Primrose concurs as to

Def. pr. 359.

every particular of the time, manner, and other circumstances of the
 miscarriage.—Depones, “ That Lady Jane was, for some time after the
 “ said miscarriage, confined to her bed, as the deponent was told, by
 “ those who attended her; and the deponent was in her house, and saw
 “ her before she was perfectly recovered, but after she had got up out
 “ of bed. Depones, that the deponent herself did then believe, and
 “ does still believe, that Lady Jane did miscarry at that time, and
 “ the persons who conversed with the deponent on the subject at that
 “ time, appeared also to believe it, and the deponent did not hear any
 “ of them express any doubt of it.”

It is impossible for witnesses, when deposing from memory to an in-
 cident of this kind, at the distance of sixteen years, to be precise as
 to days or weeks; but the time of the above miscarriage is suffi-
 ciently ascertained by Mrs. Hewit’s letter, and there is not a fortnight
 of discrepancy among the whole witnesses in this particular. It is
 true that Mrs. Hewit, in her deposition in the service, has fallen into
 a mistake, in saying that Lady Jane became with child after the
 christening; whereas in fact it was about the time of the christening,
 or not long before it.—She depones, “ That *about a month after the*
“ christening

"*christening*, Lady Jane fell again with child, and when she was near three months gone, her foot slipt in the street, as she was walking home from a visit to Lady Wigton, and gave her back a twist, by which means she miscarried next day, and was much worse upon that occasion than she formerly was when she was delivered at Paris."—The pursuers take hold of this inaccuracy as to the time of falling with child, and, by a calculation taken from this part of Mrs. Hewit's deposition, contrary to her own letter wrote at the time, and to all the other evidence, they endeavour to make the miscarriage as late as January, or at least to show a contradiction in the evidence. But nothing can be more trivial. The time is fixed by the letter to have happened about the end of November, and Mrs. Hewit, in deposing afterwards from memory, though she might fall into a mistake as to dates, could not have the least intention or scheme in so doing. Contradictions of this kind, in circumstances of no earthly moment, rather tend to confirm than to discredit the evidence of witnesses.

In like manner it is observed, with regard to the accident which occasioned the miscarriage, that some of the witnesses make it to have happened in *going* upon a visit to Lady Wigton, and others in *returning*. From the letter it would rather appear, that Lady Jane had met with this accident in coming home, but whatever was the fact, it would have been singular, if five or six witnesses, in deposing from memory, at the distance of sixteen years, had been uniform in such minute and immaterial circumstances.

Another objection is founded on an unsigned letter, supposed to be Service, p. 55. A. from Lord Blantyre to Sir John Stewart, dated Paris, 29th December, in which he says: "I was very glad to find, by your last, that the news of my Lady Jane's being ill was but a false report." What use can be made of this the memorialist does not comprehend. It is unquestionably proved, that Lady Jane was indisposed towards the end of November; Sir John's letter therefore, to which Lord Blantyre's is an answer, must have been wrote either at some *prior* or *posterior* period.

It was next said, that Madam Mailfer, when she went to visit Lady Jane after this miscarriage, had found her out of bed, and in stays; she depones, "That after the baptism, though she cannot recollect if Def. pr. 603. it was in the harvest or in the spring following, remembers only, that it was very cold, Mr. Stewart came to tell her, that his wife had had a miscarriage; that, in consequence of this, the deponent sent the following days to enquire for Madam Stewart, and went to visit her four or five days after; that at this visit she found Madam Stewart up and dressed; that she testified her surprise to her, especially as she had on whalebone stays and laced; but that Madam Stewart

"Stewart answered her, that she was tolerably well; and that, besides, it was her custom to wear whalebone stays, even when she was with child, which stays she even showed the deponent about an hour thereafter, in the course of the same visit; and the deponent observed, that these stays were open, and laced at both sides, as the stays which women with child ordinarily wear are." The circumstance here deposed to by Madam Mailfer, is no way contradictory. All the other witnesses agree, that Lady Jane kept her bed for some time, and Madam Mailfer seems to mean, that her visit was four or five days after Sir John told her of the miscarriage, which might be a good many days after the accident itself, and she cannot be certain from memory, as to the precise number of days; besides, she says, Lady Jane showed her, that her stays were laced in the sides, and of that kind which are usually worn by women with child.

Def. pr. 141. G. Much weight is also laid on a supposed contradiction, between Isobel Walker and Mangin the defender's nurse, in a particular with regard to this miscarriage. Isobel Walker's deposition has already been given, and the nurse's is in these words: "Dépose qu'elle a entendu dire, et qu'elle a su par elle même, que Madame Stewart avoit fait une fausse couche à Reims, deux ou trois mois après son arrivée de Dammartin. *Interrogée encore de la part du défendeur*, si ce fut après le baptême, dépose qu'elle s'est trompée, et que ce fut deux au trois mois après le baptême. Dépose qu'elle a su dans le tems par la demoiselle Effay, l'une des femmes de chambre de Madame Stewart, que cette fausse couche avoit été occasionnée par une chute que Madame Stewart avoit faite dans un escalier chez Madame la Baronne sa commere; qu'elle étoit revenue chez elle sentant du mal au dos; et qu'après une nuit facheuse elle étoit accouchée le lendemain. Dépose que ce même jour lendemain matin, vers le huit à neuf heures, elle déposante ayant rencontré la demoiselle Effay dans l'escalier, tenant un pot de chambre découvert, elle dit à la déposante, mon dieu! Cher nourrice, quel accident? Surquoi elle déposante, luy ayant demandé ce que c'étoit, la demoiselle Effay luy dit, que c'étoit une fausse couche que Madame Stewart avoit faite, qu'alors la déposante, voulant la voir par curiosité prit, un petit baton, remua qui étoit dans le pot de chambre, leva le fœtus et reconnut que c'étoit un enfant mâle de la longueur de sept à huit pouces."

371. C. Your Lordships will observe, that both of the witnesses agree in this fact; that they saw the abortion, and Isobel Walker, towards the close of her oath, says, "It was a lump about the bulk of four or five fingers when contracted together," so that they only differ a little as to the size and figure of it. The pursuers have been at great pains to prove by surgeons and persons of skill, that the nurse must have been

been in a mistake. Were it necessary to enquire very accurately into this matter, it might possibly appear, that some of these persons of skill, are not very right in their conjecture; but it is enough to say, that as the substance mentioned by the witnesses, must have been seen by them very imperfectly, and only for a few minutes, it is not at all surprizing, that, at the distance of so many years, they should not be quite accurate as to the shape or dimensions of it. The pursuers were pleased to insinuate, that this poor woman, the nurse of the defender, was in the lowest circumstances, and that from her deposition, she appeared to be influenced and partial. The defender denies that any such thing appears in her deposition, or that the pursuers have been able to produce the smallest evidence to affect her credibility or character. It is very true, that she is in mean circumstances, but this is an objection which comes with a very bad grace from the pursuers, who, in certain parts of their proof, have had recourse to a set of the poorest and most abject wretches existing on the face of the earth.

The pursuers, in the next place, endeavoured to throw discredit upon the miscarriage, by insinuating, that Lady Jane had rather too many accidents of that kind, and they were pleased to enumerate no less than five in whole, viz. one in Holland, three at Reims, and one in England.

As to the miscarriage in Holland, such a thing may naturally have happened, though it depends only on the hear-say evidence of one witness, viz. Madame Negret, who says, Mrs. Hewit told her of it.—Def. pr. 498. Madame Negret may possibly have misapprehended Mrs. Hewit, or ^{C.} she may have committed some slip of memory in recollecting a conversation at such a distance of time. She tells it only in an overly manner, and as neither Mrs. Hewit nor Isobel Walker talk of any such miscarriage, it is extremely possible, that the witness may be in a mistake as to this circumstance.

The three miscarriages at Reims, when attentively examined, seem reducible to one, viz. that which has already been treated of, and which is established by such a variety of concurring evidences.—The other two are mentioned only by single witnesses, and in a very indistinct manner, viz. one by Mangin, the nurse, and the other by Madame Rutlige.—Mangin deposes, “ qu’environ deux mois et demi Def. pr. 142. “ après cette première fausse couche, elle apprit par les femmes de ^{C.} “ chambre de Madame Stewart qu’elle avoit faite une seconde fausse “ couche; qu’elle ne la vit pas comme la première, mais seule, qu’elle “ vit le lit et les linges de Madame Stewart *tous remplis de sang.*— And in another part, she says, “ Qu’elle a appris la seconde fausse Def. p. 145. “ couche de Madame Stewart par ses deux femmes de chambre, Isa-^{E.}

“ belle et Effay, en les voyant apporter les linges de Madame Stewart,
 “ pour faire la lessive chez Madame Mayette, dans la maison de la-
 “ quelle on les blanchissoit. Dépôt, qu'elle ne lui ont point dit, qu'à
 “ cette fausse couche, il y eût aucun fœtus, mais que seulement il y
 “ avoit *plus de sang qu'à l'ordinaire.*”—From the circumstances men-
 tioned by the witness, it is extremely probable that this was an indis-
 position of another kind, which may possibly have been more trouble-
 some than ordinary, and which the witness may either have miscon-
 structed at the time, or may now, from inaccuracy of ideas, have
 misapplied, and blended with the other story of the miscarriage.

The same observation holds with regard to the fact told by Ma-
 dame Rutlige, of an indisposition in summer 1749. And indeed Ma-
 dame Rutlige's story and the nurse's are in all probability one and the
 same; for though the one witness makes it some months earlier than
 the other, the circumstances told by both are remarkably similar, and
 the discrepancy as to the precise period is by no means wonderful. Ma-
 dame Rutlige deposes, that she came from Dunkirk to her country
 house of the Marais, near Reims, in the beginning of June 1749,
 and was acquainted with Lady Jane, while there, which was till Sep-
 tember that year. “ Dépôt, que dans le cours de ces trois mois, al-
 “ lant rendre une visite à Madame Stewart, sans qu'elle puisse se ra-
 “ peller le tems, se souvenant que c'étoit passé le milieu de ces trois
 “ mois, elle apprit que cette dame étoit incommodée; qu'elle depo-
 “ sante étoit alors accompagnée de Mr. de Rutlige, son mari, qui resta
 “ avec Mr. Stewart et Mr. Macnamara, pendant que la déposante fût
 “ conduite par Mademoiselle Hewit dans la chambre de Ladi Jeanne
 “ Douglas; qu'en entrant dans cette chambre, Mademoiselle Hewit
 “ dit à l'oreille à la déposante, que Madame Stewart étoit indisposée
 “ d'une fausse couche; que la déposante trouva Ladi Jeanne au lit, et
 “ que Ladi Jeanne, l'ayant fait asseoir sur son lit, et lui ayant pris la
 “ main, causa avec elle, pendant une petite demie-heure: que pendant
 “ cette demie-heure la déposante, qui avoit alors quitté le lit de Ladi
 “ Jeanne pour prendre un fauteuil, s'aperçut (comme Ladi Jeanne
 “ avoit demandé une serviette, ainsi que les dames dans cette situation
 “ en ont besoin) qu'elle étoit dans l'état où les personnes du sexe sont
 “ tous les mois.” The circumstance of the *serviette* seems to indi-
 cate another indisposition rather than a miscarriage. Mrs. Hewit had
 probably informed her of the miscarriage which happened in No-
 vember preceeding; and as the witness may possibly have seen Lady
 Jane indisposed some time in summer 1749, she has, from want of re-
 collection, blended circumstances and periods together, so as to make
 one story out of two. None of the other witnesses mention any thing
 of a miscarriage in June; on the contrary, Isobel Walker seems to say
 that

that Lady Jane never had any miscarriage except the one above deposed to, all the time she was abroad. The indisposition deposed to by Madame Rutlige and the nurse was of such a kind as could be easily misconstrued or mistaken by them; and therefore it is not probable that there is any contradiction between them and Isobel Walker, who in general says, that Lady Jane had but one miscarriage.—Lady Rutlige is known to be a woman of unexceptionable integrity, but the less weight is to be given to her account of this matter, that, from absolute failure of memory, she appears to have fallen into sundry other mistakes; particularly, she mentions interviews with Lady Jane, and visits received from her and the children at her house of the *Marais*, which in fact happened at Dunkirk at a subsequent period.

The only other story of that kind, which the pursuers endeavour to convert into a separate miscarriage, is told by Mrs. Maitland, (with Def. pr. 386. whom Lady Jane lived for some time, when in this country in 1752,) F. in the following words, depones, “ That Lady Jane acquainted the “ deponent, that when she was at London, and after bearing her children, in making a visit to Lady Home, she strained her ankle, and “ was obliged to go home, where she parted with child.”—The meaning of this is extremely plain: Lady Jane has told the witnesses of her miscarriage at Reims, occasioned by slipping a foot in a visit to Lady Wigton, and in repeating the story at the distance of thirteen years, the variation of *London*, in place of *Reims*, and *Lady Home*, in place of *Lady Wigton*, is not considerable.

The whole of the proof, therefore, on this first head, seems to afford legal and full conviction, that Lady Jane Douglas, who was only forty-nine years and a few months old, when she became with child at Aix-la-Chapelle, was in a condition to have children, and that she actually miscarried at a period subsequent to the delivery. It is impossible that this miscarriage could be feigned, with a view of imposing on Lady Wigton, Mrs. Hepburn, or the people at Reims, so as to induce them to believe in a birth, of which they never entertained the smallest doubt or suspicion. Had this been the view, it would have been much talked of, and all their friends would have been acquainted of an incident, which it was of so much consequence for them to propagate; but there is not the least evidence, that any notification of the miscarriage was given to their friends in this country, and even Baron Macelligot, though on the spot, and every day with Sir John Stewart, appears to have been ignorant of the cause of Lady Jane's indisposition; for he swears, that he does not remember to have then Def. pr. 350. heard from Lady Wigton, or any body else, that Lady Jane had miscarried. G.

The

Zacchiæ
quæst medico-
legales.

The pursuers appeal to the authority of Zacchias, an Italian, who appears to have been both a physician and a lawyer, and writes professedly in both characters. From this author they endeavoured to show, that women generally ceased to be in the condition of having children before the age of fifty; and therefore, that it was a circumstance, or ingredient in the proof of *partus suppositio*, if the woman accused was of that age. The memorialist does not know if it be any recommendation of this author, that he pretended skill in two professions so different from each other; at the same time it is probable, that the women of Italy do not continue so long in the condition above described, as those of more northern countries. But, whatever may be in this, if in fact it is proved, that a woman is in that condition, it follows of course, that she also may have children, and any presumption which might otherwise arise from her age, must totally vanish. This was the case of Lady Jane Douglas; she still retained that natural habit, which made her capable to have children. The circumstance, therefore, of her age, can be of no sort of weight in the question.

Nay, the memorialist will go a little further, and maintain, that Lady Jane's condition being thus proved, does of itself discredit and render absurd, the whole system of the pursuers. Is it possible to figure, that Lady Jane Douglas, who had been little more than a year married, and though not just in the prime of her youth, was still in the way of having issue by her husband, would sit down, and deliberately contrive a plan to disinherit and ruin her own children, in case she should have them? The hopes of married women are generally sanguine, as to the article of having issue. Lady Jane's trial of the marriage-state had been extremely short, when she is supposed to have contrived this plan. She could not but know, that there was a *possibility* of her having children. It was therefore a most singular conduct in her, and no less so in Sir John Stewart, the next heir to a good estate, if it be true that they embarked in this desperate enterprize, which, if attended with success, might disinherit their own offspring, and, if detected, would necessarily end in disgrace and punishment to themselves. The scheme would have been absurd in itself; but that none such was formed, will appear abundantly from the following proofs.

2. PREG-
NANCY.

The next fact established by direct evidence is, that Lady Jane Douglas had every symptom and appearance of pregnancy, and was, in fact, with child in her own belief, and in the opinion of others, for the usual time, preceeding her delivery at Paris in July 1748.—The pursuers did not seem to dispute the exterior marks of pregnancy; but

but they insinuated, that these were equivocal ; that they were sudden and not gradual ; and that they were only assumed in the end of February or beginning of March 1748, when she ought to have been in the fifth month.—The contrary of this will appear from the following state of the proof.

Lady Jane and her family lodged in the house of Madame Tewis ^{At Aix-la-Chapelle.} from the 25th April 1747, till the 5th January 1748. Madame Tewis was a woman of some consideration in Aix-la-Chapelle ; and it appears, that she became very intimately acquainted with Lady Jane. She died some time before the commencement of this process, but, providentially, her evidence, with regard to the pregnancy, has been preserved, and, indeed, the strong conviction she had of it, as well as her particular access to be acquainted with Lady Jane's situation, are established by a variety of proofs.—A notorial declaration given by this lady in 1750 (the history of which shall be afterwards stated) makes a part of the evidence in this process. Her son, and one of her daughters, has been examined as witnesses, and there is a letter in the proof from another of her daughters ; and your Lordships have also the testimony of sundry other witnesses of character, who conversed with Mrs. Tewis upon the subject.

That she was a woman of good fashion and character, and intimate with Lady Jane, appears from the evidence of Sir George Colquhoun, who, after mentioning a conversation which he had with her in 1750, concerning Lady Jane, depones, “ That Mrs. Tewis seemed greatly ^{Def. pr. 323.} affected with the friendship and confidence Lady Jane had shown to- ^{B.} wards her ; and added, that she herself was in easy circumstances, and had no other motive in interesting herself in any thing that attacked Lady Jane's character, but the friendship with which Lady Jane had honoured her, and the tender regard which she had for Lady Jane, whom she loved as her own sister. Depones, That Mrs. Tewis appeared to the deponent to be a woman of fashion, above those who commonly let lodgings.” Madame Mary Tewis deposes, ^{Def. pr. 479.} “ That Lady Jane was connected in great friendship with the said Ma- ^{A.} dame Tewis, the deponent's mother.” The same thing appears from the depositions of Madame Shell, Madame Gillefon, and other proofs ^{Def. pr. 472, 475, F.} unnecessary to be recited.

The declaration of Madame Tewis is in these words : 5th day of the month of August, 1750, has declared and attested, “ That the 25th day ^{Def. pr. 483.} of April said year, 1747, my Lady Douglas, on her arriving in this ^{D, E.} city, at the inn of the Pear-tree, upon the great market-place, with the Seigneur John Stewart, her husband, he that same day agreed for lodgings in the comparant's house for them two, which they also occupied the next day, being the 26th of the same month of
 2. A April,

" April, with their servants, that is to say, Miss Hewit, two chamber-
 " maids, and a footman; that, at the beginning of the month of No-
 " vember following, the comparant and the chamber-maids observed
 " the first symptoms of the pregnancy of said Lady, by the repeated
 " vomitings, and other small indispositions, with which she was trou-
 " bled in the morning, and by the particular food she then begun to
 " take, besides her ordinary; and that the two spouses above named,
 " a few days after, requested the comparant, their landlady, to cause
 " put a second bed in the same room, which she caused do immediately;
 " and that after this, successively from one month to another, she ob-
 " served the visible increase of the said pregnancy; as also, that my
 " Lady, during this situation, caused widen her stays and cloaths two
 " several times; and knowing that my Lady had no intention to lie-
 " in here in town, during the congress of peace then assembled, the
 " comparant caused inform her cousin, the grand baillie of his Excel-
 " lency the Count de Salm, hereditary marischal of the electoral
 " archbishoprick of Cologne, living at the castle of that Count, called
 " Bedbour Refferschieds, situated six leagues from the imperial city of
 " Cologne, to know if Lady Jane could have the liberty to lie-in there;
 " but, as it was necessary for him to communicate this previously to
 " his said Excellency, living at Vienna, the two spouses, on account of
 " the advancement of the pregnancy of Lady Jane, not judging it
 " proper to risque waiting an answer, then uncertain, they took the
 " resolution to transport themselves in time from Aix-la-Chapelle to
 " Reims in Champaign; as in fact they departed the 22d May 1748;
 " on which day, early in the morning, the comparant, wanting to
 " take leave of my Lady, and going into her room unexpectedly, she
 " found my Lady in her shift, and rising out of bed, and observed her
 " pregnancy so extraordinary, that the comparant was astonished at
 " it. In which situation my Lady, in good health, set out with her
 " spouse upon the road to Reims, the 22d May, without waiting the
 " said answer from Vienna, which arrived, however, some days after
 " their departure."

Def. pr. p.
 479, B.

Def. pr. p.
 1006, F.

Mary Therese Tewis depones, " That her mother never doubted of
 " the pregnancy or delivery of Lady Jane Douglas, because she was
 " well informed and had knowledge of it." A letter from the other
 daughter, the lady of Colonel Herbert, to the Dutchess of Douglas, of
 date 22d August 1763, is in these words: " Since I had the honour of
 " your Grace's visit, I have made it my business to look over my mo-
 " ther's letters, and am extremely concerned I cannot find that letter
 " she wrote me, when she sent me the papers and depositions taken
 " at Aix, before a notary-publick, which I told your Grace I delivered
 " by the advice of the late Lord Ross, to Lady Cathcart, who pro-
 " mised

" mised to deliver them to Lady Schaw, who had then the care of the
 " surviving son of Lady Jane Douglas-Stewart. I cannot recollect
 " what is become of my mother's letter at that time, but am positive
 " her expressions were very strong, that Lady Jane was certainly with
 " child at the time she mentioned; some mention was made of a mid-
 " wife; whether her expression was as positive as the best midwife at
 " Aix could be of it, or that she was as positive of it as the midwife
 " herself was; as I have not seen this letter of late, I cannot positively
 " charge my memory which of the two it was: from her own experi-
 " ence, and the opportunity Lady Jane had given her of seeing her
 " naked in bed, with only her shift on, she might say she was as cer-
 " tain of it, as the best midwife there could be, having had so many
 " children herself, and seen dubious cases of that nature, one in par-
 " ticular of her own daughter, who afterwards died in child-bed. I
 " think, had my mother been in the least doubt of it, she would have
 " mentioned as it appeared; and as she mentioned it so strongly, I
 " am positive, from the best of my remembrance of all she ever wrote
 " to me about it, she positively thought her to be quick with child."

The memorialist was, by an accident, deprived of the benefit of this lady's parole testimony, after the proof was allowed; and therefore her letter has been received into process.

Sir George Colquhoun depones, that he was at Aix-la-Chapelle in the year 1750, and conversed with Mrs. Tewis upon the subject of Lady Jane Douglas. Depones, " that Mrs. Tewis then told the depo-
 " nent, that, upon Lady Jane's arrival at Aix-la-Chapelle, she sent to
 " take lodgings in the house of Mrs. Tewis; that Mrs. Tewis was ac-
 " quainted that one Mr. Stewart, a friend of Lady Jane's, who travel-
 " led with her, was to lodge at the same house, and a room was be-
 " spoke for him; that, upon their coming to the house, Mr. Stewart,
 " upon looking at his room, found fault with the bed as too short, and
 " when she, Mrs. Tewis, was giving directions to have it lengthened
 " for him, Lady Jane's maid told her aside, that having two rooms for
 " Lady Jane and Mr. Stewart, was only a ceremony to blind the world,
 " as they were privately married, but had reasons to conceal it, and
 " that two beds would not be necessary; that however Mrs. Tewis
 " made answer, that she had no concern in these private affairs, and
 " she accordingly caused lengthen the bed; that soon after, as Lady
 " Jane went little into company, she contracted an intimacy with
 " Mrs. Tewis, and acquainted her of her marriage, and the reasons
 " for concealing it; that, during Lady Jane's stay in her house, she,
 " Mrs. Tewis, being frequently with her in the morning, and observ-
 " ing her to have the disorders which women are frequently subject
 " to when with child, she prescribed her such things, as she had
 " found

Def. pr. 29.
C.

“ found useful to herself, when in that condition, and she likewise,
 “ from time to time, caused her own mantua-maker widen Lady
 “ Jane’s petticoats in the course of her pregnancy; and that before
 “ Lady Jane left Aix-la-Chapelle, she appeared to her, to be within
 “ six weeks or two months of her delivery; and that she, Mrs. Tewis,
 “ was mostly at Lady Jane’s bed-side in the morning, and frequently
 “ had put her hand upon Lady Jane’s belly, and found the child or
 “ children move; and Mrs. Tewis added, that she safely could, and
 “ was resolved she would, give her oath, that if ever she herself, or
 “ any other woman, was with child, Lady Jane was with child when
 “ at Aix-la-Chapelle. Depones, that Mrs. Tewis added, that as the
 “ time of Lady Jane’s delivery approached, she observed her less cheer-
 “ ful, and more pensive than usual, and upon her asking the reason
 “ thereof, Lady Jane told her, that the thing which gave her uneasi-
 “ ness was, the thoughts of being delivered at Aix-la-Chapelle; and,
 “ thereupon, receiving the compliments of congratulation of the
 “ people of rank then there on account of the congress, and to whom
 “ she had not intimated her marriage: upon which Mrs. Tewis told
 “ her, that, in order to avoid that difficulty, she would cause a clergy-
 “ man, a relation of her’s, who was factor to a German nobleman,
 “ who had a country house some leagues from Aix, where he did not
 “ generally reside, and who was then at some distance, in another
 “ part of Germany, write to that nobleman for the use of his castle
 “ to Lady Jane for her lying-in. Depones, that Mrs. Tewis further
 “ said, that upon this proposal Lady Jane appeared to be perfectly
 “ easy, and continued so for some time, and when Mrs. Tewis
 “ thought there was no obstacle to her proposal taking place, Mr.
 “ Stewart insisted, that Lady Jane should go to the South of France to
 “ be delivered.”

Def. pr. 32.

Colonel Robert Douglas, who also conversed with Madame Tewis, deposes, in substance, the same thing with Sir George Colquhoun.

Def. pr. 495,
C.

Madame Tewis’s belief in the pregnancy, appears further from the deposition of her son the Abbé Tewis, arch-priest of Aix-la-Chapelle, who deposes, “ That his mother always persisted in saying, that she
 “ had no doubt of the pregnancy and delivery;”—and also from the depositions of Sholl, Gilleson, and Miss Primrose, and from her own letter to Sir John Stewart, of date 9th September 1748, in answer to Sir

Def. pr. 728,
and 998.

John’s, acquainting her of the birth. In this letter she congratulates Sir John and Lady Jane, and, among other things, says, “ allow me,
 “ Sir, to tell you, qu’ils etoient fabriqué dans ma maison, and
 “ that the produce of my house is very valuable; so, if you incline to
 “ have any more, you must do me the pleasure to bring back my Lady
 “ to it, whom I assure of my very profound respects, as well as you,

“ Sir,

" Sir, and Mrs. Hewit. I immediately delivered the inclosed to Mr.
 " D'Obin. My Lord Sandwich left our house the 5th of last month."

Another proof of Madame Tewis's thorough belief in the pregnancy, arises from the application which she made to her cousin Joseph Tewis, for the use of the chateau de Bedbur to Lady Jane, during her in-lying. Joseph Tewis was one of the persons who declared before the notary in 1750:—What he says is in these words: " Mr. Joseph-William Tewis, Def. pr. 486.
 " grand-baillie and counsellor to his Excellency the Count de Salm, has
 " declared and attested, that, at the beginning of the month of May
 " 1748, upon the request of the first comparant, Madame Tewis Born
 " de la Grange, to receive to the castle of Bedbur^{Reyferschield}, my
 " Lady Douglas, to be there brought-to-bed, he immediately wrote to
 " his Excellency his said master, who lived always at Vienna, to obtain
 " his consent to it, who answered him, that her lodging in his castle
 " would do him honour and pleasure, but that his Excellency was mor-
 " tified, that he could not present his castle better furnished than it
 " was, according to the merit of my Lady Douglas; which answer,
 " however, as the comparant afterwards learned from Aix, arrived too
 " late, after the departure of said Lady" In his oath, as a witness in this
 cause, he confirms the same particulars, which shows, that the decla-
 ration was sufficiently accurate.

From these accumulated proofs, with regard to Madame Tewis, it is plain that she was in the knowledge of Lady Jane's pregnancy from its earliest periods; that she had particular opportunities of knowing Lady Jane's condition, and was thoroughly convinced of her being with child. She carries back her own and the two chambermaids observations, as far as the beginning of November, and says, that the symptoms observed by them at that time were vomitings, slight indispositions in the morning, attention to diet, &c. after which she observed the visible and gradual increase of the pregnancy from time to time. This account agrees entirely with that given by Isobel Walker, one of the servant-maids, a witness examined in this country, and who never had any intercourse or connexion with Madame Tewis, after leaving Aix-la-Chapelle in 1748. She depones, " That before the deponent Service, p.
 " knew any thing of Lady Jane's being with child, observing her fre- 18, D.
 " quently to be out of order, and sometimes throwing up, the depo-
 " nent was in use to talk to Mrs. Davis * their landlady, to whom the
 " deponent related Lady Jane's complaint, considering her as a woman * The word
 " of experience: That, after some of these conversations, Mrs. Davis Davis was
 " told the deponent, that she needed not be alarmed about her Lady, take for
 " for that she was with child; which was the first notice the deponent Tewis, in
 " had of her being so: That the deponent soon saw that such was the taking down
 the deposition.
 " case,

"case, for Lady Jane had all the symptoms of a woman in that condition, &c."

It was said, that Madame Tewis appears to have understood no English, because Lady Jane and Sir John afterwards corresponded with her in French, and that Isobel Walker, when at Sedan, in May 1748, seems, from her own oath, to have had but an imperfect knowledge of the French language, and therefore both Mrs. Tewis and Isobel Walker must have told a falsehood as to the conversations between them about Lady Jane.

This objection is founded on a very strained supposition, that people living for about six months together in the same family, had no way of communicating their ideas to each other. In the first place, it appears from the proof, that Isobel Walker, during her stay in that country, picked up a smattering of French. 2dly, It is a certain fact, though not in the proof, that she had learned to speak Dutch very tolerably, and can still speak it. And, lastly, Mrs. Tewis and all her family knew a little English, besides understanding the Dutch thoroughly and the French, which are the languages spoke in that country.

In Madame Scholl's house, where Lady Jane lodged from January to March 1748, though the marriage was endeavoured to be kept secret, her being with child was soon discovered by the landlady, who has deposed, " That she suspected Lady Jane to be with child, from the sickness of her appearance, and other circumstances. Depones, That, after having learned the marriage of Madam Stewart, the deponent observed, that this Lady was almost always weakly; but the deponent did not know what was her disease. Depones, That she suspected the said Madam Stewart was with child, because she was always so weak, delicate, and pale; and that she always wore a large hoop, even in her room. Depones, That the said lady, during the time that she staid in her, the deponent's, house, did not go abroad, but four or five times; and that, one of these times, going to make a visit to the Princess of Salm, she was carried from her room in a chair down the stair, and to the coach, which waited her at the door of the house, which appeared extraordinary to the deponent. Depones, That, in this chair, said lady was very much covered up, and even when she was in her room, insomuch that the deponent could never observe her shapes, to judge if she was with child or not; but the deponent had suspicions, which these precautions, and the weakness of Lady Jane gave birth to. Depones, That Madame Tewis visited sometimes Madam Stewart in the deponent's house, and appeared much connected by friendship with her. Depones, That when Mr. and Madam Stewart came to lodge in the deponent's house, they came immediately from Madame Tewis's, in whose house they had

" had lived for some time. Depones, That, on leaving the deponent's
 " house, they went to lodge in the house of Madame Gillesen, a burgher.
 " Depones, That it was the said Madame Tewis who engaged the de-
 " ponent to let an apartment in her house to Lady Jane Douglas, and
 " it was the said Madame Tewis who agreed for the rent. Depones,
 " That, when Lady Jane Douglas lived in her house, Lord Crawford
 " came to see her almost every day, at the time that he lived at Burset,
 " a little village very near this town. Depones, That there came also
 " some times two gentlemen, whose names the deponent does not
 " know, but she believes they were English, to visit Mr. Stewart or
 " Lady Jane, the deponent does not know which of the two; adds,
 " That Mr. Stewart proposed to the deponent, to let two rooms to
 " these gentlemen, which she could not do, seeing she had disposed of
 " her apartments. Depones, That the Princess of Salm came also sun-
 " dry times to see Lady Jane Douglas in the deponent's." This witness
 further says, " That the reason of the departure of these persons from Def. pr. 471;
 " the deponent's house was, that the season of the waters having aug-
 " mented the rents, other people offered to the deponent a rent much
 " higher; the deponent proposed to Lady Jane Douglas and Mr.
 " Stewart, to give them the preference, but they refused this preference,
 " and changed lodgings."

This witness, though no way in the confidence of Lady Jane, whose
 situation was rather endeavoured to be concealed, seems to have en-
 tertained no doubt of the pregnancy; and what further shows her con-
 viction that it was real, is the following passage in the close of her oath:
 depones, " That a short time after the departure of Lady Jane Dou- —p. 474, C.
 " glas from Aix-la-Chappelle, Madame Tewis sent to tell her, the depo-
 " nent, that Lady Jane was brought to-bed of two male children; and
 " that she had received the news by a letter; upon which the depo-
 " nent went herself to see Madame Tewis, and to testify to her the joy
 " which this news gave her."

Baron Macelligot, now a Major-General in the Austrian service,
 was at Aix-la-Chapelle in the end of the year 1747 and beginning
 of 1748, and was very intimate with Sir John Stewart and Lady
 Jane. It does not appear at what precise period he first observed the
 pregnancy, but he deposes as follows: " That when he first saw Lady
 " Jane at Aix-la-Chapelle; she had not to him the appearance of a wo- Def. pr. 352,
 " man with child; but that some time afterwards, from the oppor- B and C.
 " tunities he had of seeing her frequently at breakfast and dinner, he
 " observed that she had qualms which obliged her to quit the table,
 " and go into the next room, where he overheard her more than once
 " reaching and puking; that from hence he was led to suspect that
 " she was with child; that he believes that Lady Jane, perceiving these
 " suspicions,

Def. pr. 350,
C.

“ suspicions, was from thence induced to confide to him that she was
 “ married to Sir John Stewart; and that she believed herself to be
 “ with child by him, requesting that he (the deponent) would keep
 “ it a secret; and that, before this confidence was made to him, the
 “ appearances of pregnancy seemed to him so clear, that it never
 “ came into his head that they were affected or shammed; and the
 “ deponent further adds, that the reason Lady Jane gave for her wish-
 “ ing that this marriage should be kept a secret, was her appre-
 “ hensions of the Duke of Douglas withdrawing the annuity he al-
 “ lowed her; the sum the deponent cannot call to mind:—that be-
 “ fore, and about the time of the christening, he did indeed see a most
 “ visible difference in Lady Jane’s shape and looks; that she was
 “ prodigiously lean, much paler than usual, and very weak; in a
 “ word, that he saw that difference which is always observable in a
 “ woman that has lately been brought-to-bed: that Sir John and La-
 “ dy Jane did both show the most parental tenderness and fondness
 “ for their son Archy; that he cannot forbear mentioning, that sever-
 “ ral times, whilst Sir John was dancing, the child in his arms, Lady
 “ Jane, from apprehension of an accident happening, frequently
 “ screamed out, and took the child from him.—That he never doubt-
 “ ed, as sure as God is in heaven, but that it was Lady Jane’s child,
 “ and that whilst he staid at Reims he never heard any one doubt in
 “ the least of its being Lady Jane’s child.”

Purf. pr. 998,
E.

Page 8th.

Purf. pr. 39,
Q.

Lord Crawford was at Aix-la-Chapelle, or at a country-house about a mile from it, during the whole of that winter and spring, down to about the middle of April 1748. Mr. Kahr, banker at Aix-la-Chapelle, depones, “ That he is sure the departure of Lord Crawford was betwixt
 “ the 9th and 16th April said year.” And in his Lordship’s letter to the Duke of Douglas, above recited, wrote a few days after he had joined the army, viz. on the 20th April, his Lordship says, he had passed the *six months* preceeding that time in the same place with Sir John and Lady Jane. In one of Lady Jane’s letters to a correspondent in this country, dated 8th February, 1748, she mentions how happy she was in the company of Lord Crawford, and his sister and niece, whom she saw frequently; and indeed it appears from the parole evidence of the landladies and others, as well as from the correspondence of letters produced, that they lived in the greatest intimacy with him, and that he was almost every day with Lady Jane while at Aix-la-Chapelle.—His firm belief of the pregnancy, as well as his high opinion of Lady Jane and regard for Sir John Stewart, are fully manifested, not only by his letter to the Duke of Douglas, but by the correspondence which passed between his Lordship and them after he went to the army, and by various other proofs.

After.

After quitting the house of Madame Scholl, the next residence of Lady Jane and her family at Aix-la-Chapelle, was in the house of Madame Gillefon, from the end of March, down to their departure from Aix on the 22d May 1748.—Here the marriage was also endeavoured to be concealed; but your Lordships will observe in what manner it was discovered. Depones, “ That, when Lady Jane Douglas came
 “ to live in the deponent’s house, she did not announce herself as married to the said Mr. Stewart; but that, some weeks after, perhaps
 “ fifteen days or three weeks, the deponent’s servant told to the deponent, that she had observed, that Mr. Stewart went, from time to
 “ time, early into Lady Jane Douglas’s room, and that she suspected some commerce betwixt them; to which the deponent said to her,
 “ reprimanding her, that she ought not to have such ideas. Depones, that some days after, without being able to tell exactly how long, the
 “ deponent communicated the suspicion of her servant to a mantua-maker, called, *Jean Maria Bleyenheuft*, and asked her why she came
 “ every week to see Lady Jane Douglas? To which the said Bleyenheuft answered’ That Lady Jane Douglas was married to Mr. Stewart;
 “ that she was with child, and that she, Bleyenheuft, came once every week to widen her stays. Depones, that it was this conversation
 “ with the mantua-maker which gave her, the deponent, the first idea of Lady Jane Douglas’s marriage, and of her pregnancy. Depones,
 “ that after this conversation, she, the deponent, observed, by Lady Jane’s manner of walking, in coming down the stair, to go to make
 “ a visit to a friend, that she was with child, seeing that the said Lady Jane Douglas descended slowly, and with difficulty, and that her
 “ countenance was pale, but the deponent did not observe any thing else, said Lady having a great whalebone-houp and a mantley; and
 “ adds, that she would not have observed her pregnancy, if she had not been told that she was with child. Depones, that, after this
 “ time, she had not an opportunity to remark the progress of Lady Jane Douglas’s pregnancy; that the said Lady Jane Douglas went
 “ abroad afterwards once or twice, but she, the deponent, did not see her. Depones, that Madame Tewis came sometimes to the deponent’s
 “ house to see Lady Jane; but the said Madame Tewis did not come there often. Depones, that the last visit that the said Madame Tewis
 “ made to Lady Jane Douglas, was the morning of the day on which Lady Jane Douglas left Aix-la-Chapelle, and that this visit was early,
 “ perhaps about seven or eight o’clock. Depones, that after the departure of Lady Jane Douglas from Aix-la-Chapelle, she, the deponent,
 “ heard no more of her, except, that some weeks after Madame Tewis came to tell the deponent, that Lady Jane Douglas was
 “ brought-to-bed of two male children, according to the news the said

Def. pr. 475,
B.

Def. pr. 477, F. “ Madame Tewis had received by letters. Depones, that Miss Bleyenheuft also told the deponent, that Lady Jane Douglas was brought-to-bed.” This witness also depones, “ That Lord Crawford frequently came to her house to dine with Lady Jane and Sir John, and depones, that it was Madame Tewis, who made the agreement with the deponent for the price of the lodgings of these persons, and that she was paid; she does not remember if it was by Mr. Stewart or by the said Madame Tewis.” And she concludes with saying, —p. 478, B. “ That Lady Jane was very amiable, and gentle as an angel; and that these persons left her house in good friendship, and honestly.”

Def. pr. 486. Mary Bleyenheuft is now dead as well as Mrs. Tewis, but her declaration, emitted at the same time with Mrs. Tewis's in the year 1750, is in proof. It is in these words:—has declared and attested, “ That, during the stay of the Lady Douglas here in town, she was desired twice successively to cause widen the stays and cloaths of my Lady, which she, the declarant, executed the 25th April, and 22d of May 1748, according to her private annotations.” This Bleyenheuft was niece and servant of one Imhoff, a woman's taylor, and it was in that capacity that she was employed by Lady Jane Douglas.—Imhoff himself is dead, but Pierre Busche, one of his apprentices, has been examined, and depones, “ That his master performed some work for Lady Jane Douglas, when in the houses of Scholl and Gillefon.”

Purs. pr. 891, E. Depones, “ That there were made, in his master's house, some new gowns, and that some old ones were also mended; that they made some bed-gowns, some petticoats, and enlarged a pair of whalebone-stays for Lady Jane Douglas. Depones, that he very well remembers to have enlarged the said stays three times; that, as to the first time, the deponent is not sure if Lady Jane Douglas dwelt at that time in the house of Madame Scholl, or in the house of Madame Gillefon, but that he is certain that she dwelt in the house of the said Madame Gillefon, when he enlarged the stays the two last times. Depones, that it was the deponent himself who enlarged these stays all the three times, and that no other person except the deponent did work at them.—Depones, that although the deponent did —p. 894, C. “ not know the reason wherefore they enlarged the whalebone-stays, and did not even suspect it the first time, yet the repeated enlarging them a second and a third time, made the deponent suspect that it was on account of her being with child, which suspicions he communicated to his master, who bid him hold his tongue of it.”

It appears, that Lady Jane, when formerly abroad, had contracted an intimacy with Madame Martel, prioress of the abbay of St. Anne at Aix-la-Chapelle, and that, during her residence in that place, in 1747 and

and 1748, she also became acquainted with Madame de Mesbach, and some of the other nuns, whom she had occasion to meet with in her visits to Madame Martel.—The nuns of this convent are not secluded from the world, but are at liberty to pay or receive visits, and Lady Jane appears to have had that sort of intercourse with them, which was natural, upon her being connected in friendship with the prioress. Madame de Mesbach, one of the nuns, after mentioning that Lady Jane frequently came to make visits at the convent, depones, “That the first time she saw Lady Jane on this occasion, she, the deponent, suspected, that she was with child; that, at that time, the said Lady had a large handkerchief of white muslin about her neck, well fastened, and a black cloak, in which she was wrapt up, and it was by the bulk of her body, and by her carriage, that the deponent suspected that she was with child, which she also judged, from the length of her features and her * fatigued appearance (*le visage tiré, et l'aire defaite*) different from what the deponent had observed of her upon her first journey. Depones, that, at the first visit, the deponent did not know that Lady Jane Douglas was married. Depones, that as there were present at this first visit fundry other nuns, they communicated their suspicions to each other, which had struck severals amongst them; they conceived religious scruples at it, and the deponent accused herself of it even in confession; but, a short time after, the prioress told the deponent and the other nuns, that they ought not to form bad suspicions, and that Lady Jane Douglas was married to Mr. Stewart, who had accompanied her in this first visit. Depones, that after this first visit, Lady Jane came fundry other times to the convent; that she came there in a chair, and Mr. Stewart followed her on foot. Depones, that, in these after visits, she also observed Lady Jane to be in the state of pregnancy.”

Def. pr. 10,
and 480, E.

Madame Packenius, another of the nuns, depones, “That in the visits which Lady Jane Douglas made during her last journey to the convent, she, the deponent, thought, by her figure, that she was with child. Depones, that it was from the first of these visits that the deponent had the suspicion, but that then she did not know that Lady Jane Douglas was married, and it was this that even astonished the deponent the more. Depones, that she, the deponent, learnt afterwards, that the said Lady Jane Douglas was married, but she does not recollect who told her so, nor whether it was before or after the departure of Lady Jane Douglas from Aix-la-Chapelle. Depones, that what made her believe that Lady Jane Douglas

Def. pr. 483,
A.

“ las

* N. B. In this and some other passages, the defender's council has taken the liberty of correcting the translation subjoined to the proof, where it does not so exactly convey the sense of the original.

“ las was with child is, that she, the deponent, having seen her in a
 “ former journey very delicate, she saw her then bigger, as a woman
 “ who is with child. Depones, that she did not give great attention
 “ to her face. Depones, that Lady Jane was wrapt up in a false or
 “ long cloak, which was tied at the neck, and reached to her knees.
 “ Depones, that some other nuns of the convent, who had also seen
 “ the said Lady, had the same suspicions as the deponent, which they
 “ spoke of among themselves; and that she, the deponent, had a
 “ scruple at that suspicion, which led her to make confession of it,
 “ but that the scruple was at an end when the deponent heard that
 “ the said Lady was married; that it was recommended to the nuns
 “ to say prayers for Lady Jane Douglas, but the deponent does not
 “ recollect if it was by Lady Jane, or by the prioress, that this was re-
 “ commended.”

Def. pr. 493. D. The same particulars are told by Madame de Hagens, the abbess of
 the convent, who depones, “ That the said Lady Jane Douglas was
 “ much connected with Madame Martel, prioress of this convent, at the
 “ time of this third journey, and since dead. Depones, that in this
 “ last journey, Lady Jane came sometimes to see the said Madame
 “ Martel, and one time, she, the deponent, saw the said Lady in the
 “ refectoir, where Madame Martel had brought her to drink tea or
 “ coffee; that then Mr. Stewart was there also. Depones, that on
 “ this occasion, the said Lady Jane Douglas appeared to her, the de-
 “ ponent, to be with child; that the nuns, who also then saw her,
 “ and she, the deponent, spoke among themselves of Lady Jane
 “ Douglas, as of a woman with child. Depones, that she did not then
 “ know that Lady Jane Douglas was married to Mr. Stewart; that
 “ she does not recollect if she was thereafter told of the marriage; but
 “ knows, that some time after the departure of Lady Jane Douglas
 “ from Aix-la-Chapelle, Madame Martel, prioress, told the nuns, that
 “ she, Madame Martel, had learnt by a letter, that Lady Jane Doug-
 “ las was brought-to-bed of two sons. Depones, that when she saw
 “ Lady Jane Douglas on this last journey, she wore a salop, or black
 “ cloak, which tied at the neck. Depones, that she does not remem-
 “ ber particularly at what time Madame Martel died, but it is fun-
 “ dry years ago; that after her, Madame Braun was prioress of this
 “ convent; that this Madame Braun likewise died in the month of
 “ March last; and that Madame de Lamberts, presently prioress, suc-
 “ ceeded her, and this Madame de Lamberts is presently at Cologn.
 “ Depones, that there is in this convent a nun called Madame de
 “ Freins, who is bad since the month of April last; that she knows
 “ that Madame de Lamberts and Freins, were questioned, about two
 “ years ago, by persons on the part of Mr. Douglas, on the subject
 “ of

" of this affair ; and that notes were taken in writing of what they
 " said ; and she believes, that these two ladies knew, and said nearly
 " the same thing with her, the deponent, and the other nuns of this
 " convent, preceeding witnesses.

Madame Marie Tewis, also a nun, and a daughter of Mrs. Tewis,
 has deponed, " That Lady Jane Douglas, during her stay in this city, ^{Def. pr. 478.}
 " came sometimes to visit the deponent in this convent of Mariendal ; ^{D.}
 " that she did not know, during the stay of Lady Jane Douglas at
 " Aix-la-Chapelle, that the said Lady was married ; that in the visits
 " which Lady Jane Douglas made to the deponent, she, the deponent,
 " observed that said Lady had quite the appearance of a woman with
 " child, and in the last visit, she had the air of a woman ready to be
 " brought-to-bed ; but the deponent, not knowing that she was mar-
 " ried, did not give way to this thought, but believed that she was
 " dropfical."

It does not indeed appear at what precise period these observations
 were first made by the nuns, but it seems to have been very early—
 And it is remarkable, that they formed their judgment from her face,
 as well as from her shape ; and all of them perceived the pregnancy
 before they knew of the marriage.

Madame Negret, Lady of Baron d'Obin, was particularly acquaint-
 ed with Lady Jane at Aix-la-Chapelle, at two different periods, viz.
 in summer 1747, and from the month of March 1748. ^{Depones, p. 497. A.}
 " That on her return to Aix in March 1748, she went the very day
 " of her arrival to visit Lady Jane. Depones, that she observed at this
 " visit that Lady Jane Douglas was very much changed, *and that her*
 " *face was very much changed,* (et avoit le visage fort tirée) ; that she,
 " the deponent, not knowing that she was married, had not the least
 " idea that she was with child, but believed that she had been indis-
 " posed. Depones, that at this visit Mrs. Hewit spoke to the depo-
 " nent apart in another room, and asked her, *how she found my Lady ?*
 " the deponent answered, that she found her changed ; upon which
 " Mrs. Hewit answered, *That she believed it well,* seeing she was with
 " child ; and that it was time to leave Aix-la-Chapelle, because the
 " pregnancy, which was well advanced, would make the marriage of
 " Lady Jane with Mr. Stewart publick. Depones, that before that
 " minute, she, the deponent, had not known or heard this marriage
 " spoke of, and that Lady Jane Douglas never spoke to her of her
 " marriage nor of her pregnancy ; that she continued after this until
 " the departure of Lady Jane Douglas from Aix-la-Chapelle, to see her
 " as frequently as before ; and that after Mrs. Hewit had declared to
 " her the marriage and pregnancy of Lady Jane, as is above said, the
 " said Lady Jane appeared more and more to the deponent to be
 2 D with

P. 498. B.

“ with child, having a big belly. Depones, that she, the deponent,
 “ never observed the breasts of Lady Jane Douglas, but only, that at
 “ the first visit when she saw her, her breasts were hollower than or-
 “ dinary, which happens with women with child at the beginning of
 “ their pregnancy; adds, that Lady Jane Douglas had always her
 “ breasts covered before, and during her pregnancy, with a napkin,
 “ which covered all her breasts. Depones, that after the deponent’s
 “ return to Aix-la-Chapelle, Lady Jane came frequently enough to see
 “ the deponent, and the deponent went as frequently to see Lady Jane
 “ at her house. Depones, it happened once, that Mrs. Hewit asked
 “ the deponent the loan of a cloak to Lady Jane Douglas, to conceal
 “ the bigness of her belly, in a visit she was to make the Countess of
 “ St. Severn, spouse to the Count of St. Severn, minister plenipoten-
 “ tiary from the King of France to the congress at Aix-la-Chapelle;
 “ adds, that Mrs. Hewit said to the deponent, that without this
 “ cloak Lady Jane would have an indecent appearance, and the depo-
 “ nent understood by this discourse of Mrs. Hewit’s, that it was be-
 “ cause Lady Jane passed for an unmarried woman.—Depones of her
 “ own accord, that being one day with Lady Jane Douglas, she, La-
 “ dy Jane, said, that the deponent’s husband had told her, that the
 “ suspicion of her, the deponent’s pregnancy was vanished; to which
 “ the deponent answered in joke, that she was too old, and would
 “ have no more children; and that Lady Jane replied, making a sign
 “ with her hand, *look at me*, and said no more of it, and by this the
 “ deponent understood, that Lady Jane meant to speak of her own
 “ pregnancy, and to observe that she was older than the deponent.—
 “ Depones, that said Lady Jane Douglas had at Aix-la-Chapelle, the
 “ reputation of a woman of probity and virtue, who lived like a
 “ saint, generally respected and loved by all those who knew her, and
 “ who spoke ill of nobody.”

P. 499. B.

Serv. p. 9.
 A.

Mr. and Mrs. Hepburn of Keith were at the Hague with Lady Jane
 in 1746; and afterwards saw her at Aix-la-Chapelle in spring 1748;
 both of them observed her looks and appearance to be very different
 at this last period, from what they had been in 1746.—Mrs. Hepburn
 depones, “ That when the deponent saw Lady Jane at Aix-la-Chapelle,
 “ she observed a very great difference from the looks that she had at
 “ the Hague; that her face was very thin, that her belly or waist
 “ was very thick, her cheeks thin, and her eyes large; that from all
 “ which, the deponent had not the least doubt of her being with
 “ child, and that she told this to the former deponent, her husband,
 “ that night, and said to him, that she was sure Lady Jane was with
 “ child; that she told the same next morning to Mrs. Hewit, and said
 “ she took it ill, that she had never acquainted her thereof; that Mrs.

Hewit

"Hewit said, that she wanted to surprise the deponent agreeably, and
 "to try whether she would find it out herself." This last particular
 is confirmed by Mrs. Hewit, in her deposition in the service, with a ^{Serv. p. 11;}
 trifling variation only, as to the reason of Mrs. Hewit's not having ^{A.}
 sooner disclosed the secret to her. This discrepancy was noticed by
 the pursuers, but it cannot have the least effect to discredit what
 either of the witnesses have said, as it would be surprising, if the par-
 ticulars of a conversation were distinctly recollected at such a distance
 of time, though material facts, which made an impression, may be
 longer remembered; at the same time it is extremely probable, that
 both the witnesses are right, and that both reasons were given by Mrs.
 Hewit at the time. Mr. Hepburn concurs with his wife as to the ^{Serv. p. 8;}
 different appearances which Lady Jane had at the Hague and at Aix- ^{A.}
 la-Chapelle.

Lady Wigton was examined in the service, but died before the proof
 went out in this action. She and her family came to Aix-la-Chapelle
 about the beginning of May 1748, and they appear all to have been
 satisfied of the pregnancy. Lady Wigton depones, "That when she ^{Serv. p. 27, A;}
 "came to Aix-la-Chapelle, as above, she was told by Mrs. Hewit,
 "that Lady Jane was with child, and that the deponent made no ob-
 "servations on Lady Jane's person, not doubting the truth of her be-
 "ing with child, and it being generally reported in the place by all
 "her acquaintances, that she was so: that the deponent joked Lady
 "Jane upon her being with child, and Lady Jane neither said pro nor
 "con, which the deponent imputed to her being very bashful and
 "shy. Depones, that it was generally believed among Lady Jane's
 "acquaintances at Aix-la-Chapelle, that she was then with child, and
 "the deponent never heard that any of them doubted of it."—Baron ^{Def. pr. 349;}
 Macelligot says, he is convinced Lady Wigton had no doubt of the ^{E. and 352,}
 pregnancy, and that she mentioned her knowledge of it to him. ^{D.}
 Indeed, it is plain, from the circumstance of Lady Wigton's being af-
 terwards one of the sponsors at the defender's baptism, that she was
 perfectly convinced of the pregnancy and birth.

Miss Primrose, who lived at that time in family with Lady Wig-
 ton, depones, "That before Lady Wigton told the deponent of their ^{Def. pr. 357;}
 "(i. e. Sir John and Lady Jane) being married, she was one day sent ^{D.}
 "by Lady Wigton, with a message to Lady Jane: that one of Lady
 "Jane's maids took the deponent into the room where Lady Jane was
 "then putting on her stays, and Lady Jane seemed to be displeased at
 "the deponent's being then brought into the room: that, as the de-
 "ponent had before heard it whispered, that Lady Jane was with
 "child, she observed Lady Jane's person the more curiously, and Lady
 "Jane did appear to this deponent to be with child at that time. De-
 "pones,

“pones, that the reason of this deponent’s thinking Lady Jane with
 “child, was from her bulk and appearance: that this deponent did
 “not take particular notice of her breasts. Depones, that after this,
 “Lady Wigton told the deponent, that Lady Jane was married, and
 “that she was with child. And depones, that after Lady Wigton so
 “told her, of Lady Jane’s being with child, as aforesaid, the depo-
 “nent heard Lady Jane’s pregnancy often spoken of by Mrs. Tewis,
 “in whose house Lady Jane had lodged, while at Aix-la-Chapelle, be-
 “fore the deponent’s arrival there, and by Mrs. Greig, then Lady
 “Wigton’s waiting-woman, and by Lady Jane Douglas’s servants.
 “Depones, that all these persons seemed to believe, that Lady Jane
 “was with child, and that, while the deponent was at Aix-la-Cha-
 “pelle, she never heard any person express any doubt of it. Depones,
 “that she was not a judge how far Lady Jane was advanced in her
 “pregnancy, at the time of Lady Jane’s leaving Aix-la-Chapelle, but
 “remembers to have heard Lady Wigton then express her apprehen-
 “sion, that the journey Lady Jane was then to take, might be hurt-
 358, E. “ful to Lady Jane.”—The same witness depones, “That having gone
 “to Reims with Lady Wigton in 1749, she found Lady Jane there
 “and her family. Depones, that when she saw Lady Jane, upon her
 “arrival at Reims, her person was so much slenderer, than when she
 “saw her at Aix-la-Chapelle, and there was such a difference in her
 “whole appearance, that the deponent scarcely knew her to be the
 358, D. “same woman.—She also depones, that she never heard any person
 “at Aix-la-Chapelle, express the least doubt of Lady Jane’s delivery.”

Serv. p. 16. C. Mrs. Greig, Lady Wigton’s woman, has deposed to the pregnancy at
 Aix-la-Chapelle in the strongest terms: “Depones, That, in May 1748,
 “the deponent saw Lady Jane Douglas at Aix-la-Chapelle, in the
 “house where Lady Wigton staid: That Lady Jane had all the appear-
 “ances of a woman with child, and particularly her face had that
 “appearance, insomuch that nobody but one blind could have doubted
 “her being with child: That the deponent, having heard of the long
 “journey from Aix-la-Chapelle to Reims Lady Jane was to take, was
 “very apprehensive that she would never make it out, and that she
 “would lie-in on the road; the deponent communicated her appre-
 “hensions about Lady Jane to Mrs. Hewit and Tibby Walker, who
 “agreed that she was with child, and Tibby Walker signified her fear
 “that she would not make out the journey intended. Depones, That
 “she spoke of Lady Jane’s being with child to Lady Wigton, who was
 “of the same mind and apprehensions about her: That Lady Jane’s
 “pregnancy was always the subject of conversation amongst them,
 “and that she never heard anybody doubt of it while she was abroad,
 “nor never heard it called in question till the deponent came to Scot-
 “land,

"land, nor the truth of it doubted." And being examined as a witness for both parties in this cause, depones, " That she saw Lady Jane Douglas frequently, during her stay at Aix-la-Chapelle, and that she had all manner of appearance of a woman with child, as formerly deponed upon, and the deponent had no manner of doubt of her being with child, and indeed was perfectly convinced and satisfied in her own mind that she was so. Depones, upon the pursuers interrogatory, That she never saw Lady Jane Douglas till she saw her at Aix-la-Chapelle as above. But, upon the defender's interrogatory, depones, she had frequent occasion of seeing her afterwards at Reims and elsewhere, and that at Reims she had the appearance that the deponent expected, after hearing that she was brought-to-bed of two children."

Purf. pr. 343,
D.

Lady Jane Douglas's pregnancy, therefore, at Aix-la-Chapelle, seems to be established by appearances, neither sudden nor equivocal, and deposed to, independent of the servants, by persons of undoubted veracity, who could not be mistaken as to the fact.—Had the appearance been suddenly assumed, this circumstance must have struck Mrs. Tewis and others, who had occasion to be daily conversant with Lady Jane. When she left Aix-la-Chapelle, it is plain from the apprehensions which Mrs. Tewis, Miss Primrose, Lady Wigton, and others, expressed concerning her, that she must have had all the external appearances of approaching delivery. Had these appearances been assumed all at once, at a particular time, without any gradation or antecedent symptom, it is in nature impossible that so many women as appear to have had their eyes constantly upon her, should have been deceived into a belief of the pregnancy.

In like manner, at Liege, where Lady Jane and her family staid for some days on their way to Reims, the pregnancy, with all its appearances, is fully established. Mrs. Hepburn of Keith, after deposing to Lady Jane's situation, when she saw her at Aix in the spring, proceeds in this manner: " That afterwards, when the deponent saw Lady Jane at Liege, she appeared just like a clue, with a capuchin about her, which she commonly wore, and seemed to have no affectation to shew or discover her being with child: that one morning she saw Lady Jane sitting upon her bed-side without her gown, and her wastecoaat laid about her: that her breasts were quite exposed, and that, from what the deponent observed of them, it was impossible that any person, who saw her in that situation, could doubt of her being with child: that this was the more observable to the deponent, that when she saw her at the Hague, she was a thin and slender woman, in so far as she scarce appeared to have any breasts at all: that the deponent came in by surprize upon Lady Jane, in

PREGNANCY AT
LIEGE.
Ser. p. 9, B.

“ the morning above mentioned. Depones, that when the deponent
 “ was at Liege, there were several of her countrymen there, with
 “ whom the deponent conversed about Lady Jane’s being with child,
 “ which was then universally believed, and doubted of by nobody.”

—Examined afterwards as a witness for the pursuers, she depones,
 Pur. pr. 338, (after hearing her oath in the service read over) “ That it was at
 L. “ Liege, and in the morning of the day that Sir John and Lady Jane
 “ Douglas left that place, that the deponent saw Lady Jane’s breasts
 “ exposed, as mentioned in her former oath: that the deponent, upon
 “ calling at the inn where they lodged that morning, and not meet-
 “ ing any servants, opened the door of Lady Jane’s room, which gave
 “ her occasion to see Lady Jane in the situation formerly deposed to;
 “ and that the deponent made many apologies to Lady Jane for com-
 “ ing in to her room; and that it was owing to her not having met
 “ any of the servants of the house. Depones, that she does not re-
 “ member how many days Sir John and Lady Jane remained at Liege,
 “ but that the deponent saw them daily while at Liege; and that the
 “ deponent was with Lady Jane at a card-assembly there, where great
 “ respect was paid Lady Jane. Depones, that she has no letters from
 “ Sir John Stewart, other than those she formerly produced. And
 “ being interrogate for the defender, depones, That Lady Jane told
 “ the deponent, that she was going to visit a Madame la Comtesse, whose
 “ name the deponent does not remember, and asked the deponent to
 “ go along with her, which she willingly agreed to: that, when stop-
 “ ping at the door to send up the servant to enquire for the Lady,
 “ a beggar, who appeared to the deponent to have his nose flat upon
 “ his face, presented himself before the coach for charity, and to that
 “ side of the coach where Sir John and the deponent sat: that Sir John,
 “ in a violent passion, rushed out of the coach, and turned the man
 “ about, left Lady Jane, who, with Mrs. Hewit, sat on the other side
 “ of the coach, should see him: that Lady Jane asked, in a great
 “ haste, What was the matter? which the deponent told her laugh-
 “ ing, saying, that it was a man with a shocking aspect: Lady Jane
 “ answered, I wonder you laugh; for I think it is the most impious
 “ thing I ever saw in my life; and that Lady Jane appeared very
 “ angry for using the poor man so cruelly, and chid Mr. Stewart for
 “ it when he came into the coach extremely; upon which he went
 “ out again of the coach, followed the man, and gave him something
 “ extraordinary.”

Her husband concurs as to the appearance which Lady Jane had at
 Ser. p. 8, B. Liege, and adds, “ That she endeavoured to conceal her bigness in the
 “ belly, by a loose dress which she wore.” He also concurs as to the
 Pur. pr. 337, story of the beggar, and adds, “ That the deponent was told, or
 E. “ under-

“ understood, that Sir John had done this on account of Lady Jane’s
 “ being with child.”

The Chevalier Douglas, a native of France, and who was acquainted Def. pr. 500.
 with Lady Jane, having seen her in Scotland, happened to be then at G.

Liege; depones, “ That he then saw Lady Jane, with all the appear-
 “ ances of pregnancy, very visible by the features of her face, and by
 “ the bulk of her belly; and that he never saw a woman who had
 “ more the appearances of pregnancy; that he gave the more atten-
 “ tion to this, on account, that when he saw Lady Jane in Scotland,
 “ as he has already said, she was very thin, and as she was little, this
 “ made her pregnancy appear the more.”—Depones, “ That Colonel
 “ Stewart told him, that he had taken, or that he was to take a house
 “ at Reims; to which the deponent answered, that it would do better
 “ to carry Lady Jane to Paris, where she might have all the necessary
 “ assistance for her in-lying; and he said at the same time to the Co-
 “ lonel, that this was the more necessary, on account of Lady Jane’s
 “ advanced age, which would make her delivery dangerous; that La-
 “ dy Jane had then the appearances of a woman of more than forty-
 “ five years of age; and the deponent very often heard from the offi-
 “ cers of the regiment, that she was then near fifty; that Colonel
 “ Stewart answered to the above proposition, that he inclined much
 “ to carry Lady Jane to Paris, but that he was afraid he might want
 “ money.” This witness also depones, “ That he again met with La-
 “ dy Jane and her family at Dunkirk in the year 1749, in their way to
 “ England, and that Lady Jane had then an appearance quite different
 “ from what he saw she had when at Liege, as above mentioned, and
 “ she was even thinner than she was when he saw her at Edinburgh,
 “ on account that she was not then in good health.”

Patrick Byres of Tonley, who happened then also to be at Liege,
 depones, “ That he saw, and was often in company with Lady Jane Def. pr. p.
 “ Douglas, and to him she had the appearance of a woman with child, 377, G, and
 “ and big with child. Depones, That from Lady Jane’s appearance, 378.
 “ the deponent did believe she was with child, and all of her’s or his
 “ acquaintance, whom he had occasion to converse with, particularly
 “ Mr. and Mrs. Hepburn of Keith, and Miss Jenny Hepburn, his
 “ daughter; and, to the best of the deponent’s remembrance, Miss
 “ Anne Hepburn also, his daughter, and Mr. Robert Nairne, his
 “ nephew, the only British company whom the deponent knew in
 “ the place, and was in use to be in company with Lady Jane, were
 “ all of the same opinion with the deponent; that there was not the
 “ least doubt of Lady Jane’s being with child; and as to the frequency
 “ of the subject, her being with child was so little doubted, that it
 “ was seldom spoke of.—Depones, That the deponent, before he saw
 “ her

P. 379, C.

" her at Liege, heard that she was with child; and when he saw her
 " at Liege, she made no ostentation of her pregnancy, but, on the
 " contrary.—Depones, That to the deponent's apprehension, at the
 " time the deponent saw the said Lady Jane Douglas at Liege, as above,
 " he was as much satisfied of her being with child, as he ever was
 " with respect to any other woman."

Def. pr. 505,
E.

508, B and E.

In short, every person who had occasion to see her at this place, was fully convinced of her being with child, and yet she made no ostentation of showing her pregnancy, but rather the contrary. It appears also, that, at Liege, Lady Jane caused buy some lace and muslin for making child-bed linen, which was a necessary precaution, as it was uncertain how soon there might be occasion for it. Matthias Lambinon, who had for some time been in their service, when they came first to Aix-la-Chapelle, and who was then living at Liege, depones, " That next day after Sir John and Lady Jane's arrival at that place, " he and his wife went to visit Lady Jane at the Black-eagle. Depones, " That when they entered into the room of Lady Jane Douglas, she " made some steps to meet them, told them that she was fatigued " with her journey from Aix-la-Chapelle, and she afterwards sat down " upon a bed; that then the deponent remarked, that she was very " big with child, which he judged by the bulk of her belly. Depones, " That, during the stay of the said Lady at Liege, the deponent went " with the chamber-maids and Mrs. Hewit to make purchases of lace " and of muslin, and that Mrs. Hewit told the deponent, that it was " to make child's cloaths. Depones, That Mrs. Hewit told him this " in English, but the deponent understood her sufficiently to compre- " hend what she said, seeing he had learned a little English while he " lived with them." His wife, Madame Lambinon, concurs as to the appearance of Lady Jane, and says, " That her husband told her he " had been with Mrs. Hewit and the chambermaids, buying lace and " muslin, which he believed to be for the child-bed linen."

Serv. p 11,
E, and p: 19,
D.

From Liege they travelled to Sedan, where they rested eight or nine days, and from thence proceeded to Reims in the stage-coach, which was the only method of conveyance.—In this journey Lady Jane appears to have been a good deal out of order, and even in danger of being delivered.—Mrs. Hewit places this indisposition at Sedan, and Isobel Walker at Retelle, a village between Sedan and Reims, and this contradiction (if it deserves the name) is taken hold of by the pursuers. Both the witnesses agree in the fact, but they differ whether it was at one stage or another, a circumstance which can surely be of no moment. It is probable, that she was indisposed or fatigued at both places, as it appears that they rested no less than nine days at Sedan; and by the deposition of one Guenet, a notary, who travelled in the coach

coach with them from Sedan to Reims, it is proved that she was out of order at Retelle, and was put to bed by her servants before supper. Depones, " That being arrived at the inn at Retelle, Madam Stewart ^{Pur. pr. 895;} " complained of being fatigued, or out of order; said that she ^{1.} " would not take her supper, but asked for soup: That they gave her " soup, which she took; after which she was conducted by Mr. Stewart " into the apartment which was destined for her bed-chamber: That " her chambermaids, and the lady who accompanied her, went into it " with her, and remained there till she went to bed: That then they " came out; and that Mr. Stewart, the other lady, and he, the de- " ponent, supped together."

At Reims, the pregnancy is established from the time of their arrival ^{PREGNAN-} on the 7th June, to their departure for Paris the 2d July, by those ^{CY AT} who had the best opportunities of being conversant with Lady Jane.— ^{REIMS.} It is true, she was not much acquainted, or in company at this time with the people of Reims, nor, in her then situation, was it proper for her to be so; and therefore, it may very readily have happened, that some people, who had only an opportunity of seeing her in an overly manner, and who had never seen her before, gave no attention to her being with child; but it is impossible that any negative evidence of this kind can have the least effect against the positive testimony of those who saw and remarked her situation. The hypothesis which the pursuers maintained in their pleading was totally absurd and untenable. At Aix-la-Chapelle, they said, she had an appearance of pregnancy, but not remarkable, and she endeavoured to conceal it; at Liege the size of her belly was monstrous, and she endeavoured to show it; at Reims it evanished in such a manner as hardly to be discernible.—If an imposture was intended, Lady Jane Douglas had surely understanding enough to know, that a little uniformity of conduct was necessary in the execution of so difficult and dangerous a fraud. The supposition of a *desultory* pregnancy appearing in one place, and disappearing in another, exhibiting itself to one set of persons, and totally imperceptible to others, is so extravagant and incredible, that it will not meet with belief from your Lordships, or from any reasonable person. If the pregnancy was false, can a reason be figured, why Lady Jane Douglas should have studied to hide it at Aix-la-Chapelle, where its commencement, by her own letters, was dated; why she should, all at once, have made an ostentation of it at Liege, where she was only to remain for a few days; and why at Reims, where she was to produce her children, and to reside after delivery, she should have thrown aside all appearance whatever of being with child, when it was just as easy for her to have shown a large belly at Reims as at Liege, and of much greater consequence that her pregnancy should there be believed?

—But your Lordships will observe how the fact stands in the evidence.

Lady Jane and her family, while at Reims, and before going to Paris, lodged in the house of one Mr. Hibert, whose son, the Abbé Hibert, had occasion every day to be in company with Lady Jane. He de-
 Def. pr. 509, A. pones, “ That it was about the month of June that they came there,
 “ and that they lodged there about five or six weeks ; that, during
 “ their stay at this time, he had occasion frequently to see Madame
 “ Stewart, and had great share of her confidence. Depones, that,
 “ during this time, he went very commonly into the apartment of
 “ Madam Stewart, that is to say, the mornings about nine or ten
 “ o’clock, and in the afternoon immediately after the deponent’s din-
 “ ner, that is to say, at half an hour past one or two o’clock ; and that
 “ then he remained with her till eight o’clock at night, when the
 “ weather was not favourable for walking, or else he went to walk
 “ with her from five or six till eight : that the most ordinary place of
 “ these walks with Madam Stewart was the publick garden called the
 “ *Grand Jaird* : that the only road from the house of Mr. Hibert to
 “ the garden is the street *des Morts*, which is situated opposite to Mr.
 “ Hibert’s house : that when they did not go to this garden, they
 “ went as far as the rampart de Langueaux, distant three or four gun-
 “ shot from the said house : that he observed that Madam Stewart was
 “ with child, having observed her belly remarkably prominent, *comme*
 “ *une monticule uterine fort notable* ; upon which the deponent said to
 “ the Misses Hiberts, his sisters, Do you know what persons you have
 “ here ? they do not say they are married ; and there is a mystery in
 “ this, for the lady appears to me to be evidently with child, *notable-*
 “ *ment grosse*. To which the Misses Hiberts, his sisters, answered,
 “ What is that to us ? they are strangers. That one night that he was
 “ with Madam Stewart, Mr. Stewart having remained abroad longer
 “ than ordinary, the deponent said to Madam Stewart, Your husband
 “ is very long in returning to-day. To which she answered, smiling,
 “ Oh, who told you then that he was my husband ? and the deponent
 “ replied, also smiling, Your situation, Madam. To which reply she
 “ added nothing but a smile.”

This witness was known to the pursuers at a time when the defender had no suspicion of what was going on, nor any person acting for him in France ; but, for reasons which will occur to your Lordships, they did not incline to make any use of his evidence in the Tournelle action ; and they even appear to have treated him in a manner not ex-
 Def. pr. 510, A. tremely becoming. He depones, “ That before he saw any person on
 “ the part of the pursuers or defender, Mr. Mailfer Coqubert que-
 “ stioned the deponent upon this affair, and asked him, if he could
 “ well

“ well remember to have seen Madam Stewart with child when she
 “ lived in the house of Mr. Hibert, the deponent's father? That he, the
 “ deponent, told him that he remembered it well, and that no body was
 “ in a condition to talk thereon more pertinently concerning it than he
 “ the deponent, in regard he saw her oftener than any body else; that
 “ Mr. Mailfer asked him if he could certify this fact? to which he an-
 “ swered in the affirmative: that this conversation passed in the house
 “ Mr. Roger, at Cormentreuil, about two or three months before he,
 “ the deponent, first saw Mr. Stewart here present, and the persons who
 “ were with him: that the first knowledge which the deponent had that
 “ there had come to France persons on account of this affair, was gi-
 “ ven him by Mr. Hibert his father, who informed him of it about two
 “ years ago by express at Cormentreuil, of which the deponent was
 “ then curé, that there were English gentlemen come to Reims to in-
 “ form themselves of this affair, and that he would be summoned next
 “ day as a witness; that, upon this letter, the deponent having ar-
 “ rived at Reims, his father told him that these gentlemen had been
 “ at his house, and told him that they asked nothing but the exact
 “ truth with respect to the situation of Madam Stewart; and that as
 “ he, Mr. Hibert, and his wife, had been absent from Reims during
 “ the stay of that lady in their house, he had informed these gentle-
 “ men of him, the deponent, and his two sisters, as being the only
 “ persons that then lived in the house; that in consequence of this the
 “ deponent expected that he would be summoned; and having seen the
 “ officer come the same day to give a summons to his two sisters, the
 “ deponent's father asked the officer, in the deponent's presence, if he
 “ was not ordered to go to Cormentreuil, there to summon his son,
 “ the curé of that place; to which the officer said, that he had
 “ no orders; that, upon this answer of the officer's, the deponent
 “ said to his father, *Probably some body has been talking, and as these*
 “ *gentlemen will have learned that I was not favourable to their cause,*
 “ *they will have resolved not to cause me be examined:* that he returned
 “ next day to Cormentreuil, and having come back to Reims about
 “ eight days after, of his own accord, his father, who was the first
 “ person he met with, told him, “ You must come with me to the
 “ publick-house at the sign of the mill, these gentlemen want to see
 “ you: to which the deponent answered, *I will not go, because that*
 “ *would be to offer myself as a witness, to which I have a great deal of*
 “ *reluctance, these gentlemen having made me come eight days ago to de-*
 “ *pone, but without examining me.* But the deponent's father having
 “ insisted, he went with him to the publick-house, where he found
 “ Mr. Stuart here present, with another English gentleman; that one
 “ of these gentlemen having asked him, if he would certify that he
 “ had

" had seen Lady Jane with child, the deponent answered, that he would
 " certify it; on which the said gentleman said to him, *How will you*
 " *certify it? and how do you know?* L'AVEZ VOUS TATE? To which
 " the deponent answered, that his eyes told him sufficiently. To which the
 " same gentleman said to him, *Who told you that it was not rags which*
 " *she had about her?* To which the deponent replied, *What reasons*
 " *could she have had to affect to appear with child before me, when she*
 " *made a secret of it (tandis qu'elle en faisoit mystère) to my sisters and*
 " *to the publick?* Depones, that Mr. Hibert, the deponent's father,
 " was present at this conversation, and that during this conversation
 " two other gentlemen having come in, the deponent's father and he
 " came away. That these two English gentlemen, on reconducting
 " them, said to them, *Gentlemen, we have a short journey to make to the*
 " *country, and, after our return, we will go to Cormontreuil;* but that
 " since this time the deponent has not seen them, nor any other per-
 " son on their part: that, in the spring of the same year 1763, Mr.
 " Charlott, King's procurator of the sovereign commission established
 " at Reims, came to him, the deponent, at Cormontreuil, and having
 " asked him if he had been examined on oath in this affair, the
 " deponent said to him, that he had not; upon which the said Mr.
 " Charlot, being desirous to make him enter into particulars, asked
 " him what he would have deposed had he been called upon oath.
 " The deponent answered, that he had nothing to say to him so long
 " as he was not desired by the publick magistrate; and the said Mr.
 " Charlot having insisted, the deponent told him, that if he had been
 " examined, *he would have been for the child of Lady Jane, who was*
 " *born at Paris.* That it was probably on this account that these
 " gentlemen did not examine him."

Def. pr. 514. But the Abbé Hibert is not the only witness who observed the preg-
 nancy at Reims. Mr. Querangale, receiver of the customs at that place,
 was applied to by Sir John and Lady Jane, immediately after their ar-
 rival, upon occasion of one of their trunks with some table and bed li-
 nen, and other effects, having been detained at the custom-house of
 Torcey, near Sedan; and he depones, " That next day he dictated a
 " letter, which Mr. Stewart wrote to the farmers-general to get an or-
 " der for restoring the trunk. Depones, that, at this visit, Mr. Stewart
 " told him, that he had the more need of his effects, detained at Tor-
 " ce, as Madam Stewart was with child.—Depones, that three or
 " four days before the departure of Mr. and Madam Stewarts for Paris,
 " they came to him, the deponent, to ask him if it was necessary to
 " cause mark their trunks, or take any other precautions, in order to
 " transport them to Paris, where Mr. Stewart then said to the depo-
 " nent, Madam Stewart was about to go to ly-in; that then he, the
 " deponent,

“ deponent, showed some attention to Madam Stewart, and presented
 “ her a chair to sit on ; that he observed this Lady sit down and rose
 “ up with difficulty, as a woman with child ; and that Mr. Stewart
 “ gave her his hand to help her to rise up again. Depones, that after
 “ this declaration of Mr. Stewart’s as to the pregnancy of his wife, it
 “ appeared to him, the deponent, by the paleness and thin appearance of
 “ Madam Stewart’s face, by her manner of sitting down and rising up,
 “ and by her shapes, that she was with child.”

Madame Mayette, though then unacquainted with Lady Jane, observed her to be with child, from her appearance on the street. De-Def. pr. 517.
 pones, “ That she met Madam Stewart once on the street *des Morts*, B.
 “ holding Mrs. Hewit’s arm.—Depones, that Madam Stewart appeared
 “ ed to her to walk with difficulty, to have a great bulk, and the posture
 “ of a woman with child.—Depones, that she believes that it
 “ was some days after this rencounter, that Mr. Macnamara, a relation
 “ of Mr. Rutledge, came to her, the deponent, to hire an apartment
 “ for Mr. and Madam Stewarts, believes they were then gone from
 “ Reims, and remembers that Mr. Macnamara told her, that Madam
 “ Stewart was then gone to Paris to lye-in, and that, at her return, she
 “ would occupy the same apartment.—Depones, that she said to Mr.
 “ Macnamara, I believe it is the Lady whom I met in the street *des*
 “ *Morts*, and, if it be her, it was time for her to depart, for she had
 “ great difficulty to walk. Depones, that after having found Madam
 “ Stewart lodged in her house, she recollected her to be the same Lady
 “ that she had seen in the street *des Morts*. Depones, that Madam
 “ Stewart was always pale, and that, when she found her lodged in
 “ her house, it appeared to her that this Lady was fatigued, and thinner
 “ in the face than when she met her in the street *des Morts* : That,
 “ with regard to her body, Madam Stewart appeared to her a great
 “ deal less, and even extremely thin.”

Mr. Andrieux depones, “ That he remembers very well, that Mr. Def. pr. 523.
 “ and Madam Stewarts were recommended to his deceased father by D.
 “ one of his friends at Aix-la-Chapelle, called Mr. *Joseph Florentin*, in
 “ the year 1748. Depones, that Madam Stewart, some time after her
 “ arrival in this city, begged Madame Andrieux, the deponent’s mother,
 “ to cause make for her some child’s cloaths, telling the said Madame
 “ Andrieux, *that she was to go forthwith to Paris to lye-in* ; that
 “ he is certain that his mother caused make the cloaths in question,
 “ but he does not know by whom they were made. Depones, that Ma—p. 524, B.
 “ dame Andrieux, his mother, was god-mother to the child which Mr.
 “ and Madam Stewarts brought with them from Paris, and that he
 “ did not hear any person say, before the present process, that they suspected
 “ these children were not Mr. and Madam Stewarts.” It is true,

this witness says he did not observe whether Lady Jane was with child or not ; but what then ? is it possible to believe that she had not the appearance of being with child, when she caused child-bed linen to be made for her, and when Madame Andrieux, Mr. Querangale, and every other person of her acquaintance was informed, that she was immediately to set out for Paris to lye-in.—Madame Andrieux, whose death before the proof was a loss to the defender, had surely no doubt of Lady Jane's pregnancy, and of the reality of the birth, when she afterwards agreed to stand god-mother to the defender.

Purf. pr. 803,
H. Mr. Macnamara, in his letter to Sir James Stewart, dated 30th July 1756, bears testimony to his observation of the pregnancy from her looks, though he never saw her but when dressed in a hoop, so that her shape was not so distinguishable.—He appears to have known of the journey to Paris to lye-in, and he says there never was the least suspicion or imagination that the birth was not real.

Def. pr. 53,
C. The pregnancy at Reims, down to the minute of Lady Jane's leaving it to go for Paris, is further vouched by Lieutenant Mackenzie, a gentleman of honour, and incapable of telling a falsehood. He deposes to his having supped and dined three or four times with Lady Jane and Sir John before their setting out for Paris ; and, particularly, that Lieutenant Maclean and he supped with them the night before they set out, and sat with them till about two o'clock in the morning, when the stage-coach went off. Depones, " That he and Mr. Maclean attended " Lady Jane, who walked with Colonel Stewart, Mrs. Hewit and them, " to the place from which the stage-coach set out. Depones, that, up- " on all these several occasions, the deponent observed that Lady Jane " had the appearance of a woman far gone with child, being very big- " bellied. Depones, that the step of the coach being high, the depo- " nent helped Lady Jane to step up ; and some of the passengers, who " were then in the coach, likewise gave her their hand ; and she was " so big, that she went in at the coach-door side-ways. Depones, that " after leaving Lady Jane, the deponent and Mr. Maclean went home, " and went to-bed ; that, on their way home, Mr. Maclean observed " to the deponent, that Lady Jane was with child, and was gone to " Paris to be delivered ; to which the deponent answered, that she " was certainly very far gone with child. Depones, that, about two " or three days after the deponent and Mr. Maclean's first acquaint- " tance with Colonel Stewart, he told them that Lady Jane and he " were married, and that he was going with her to Paris, where she " was to lye-in."

Def. pr. 365,
C. Mr. Maclean, now in the service of Portugal, has forgot some of these circumstances, though, in general, he remembers, that Lieutenant Mackenzie and he helped Lady Jane into the coach, *which they did,*

did, by lifting her up with both their hands; and that, when she returned to Reims with the defender, he himself firmly believed in the birth, and never heard any person at Reims doubt of it; and he further adds, that he often heard Sir John and her talk of the second child which they had left behind.—General Maclean does not in reality differ from Lieutenant Mackenzie, though his memory does not at this distance of time serve him to remember the conversation which passed between them, after putting Lady Jane into the coach; and he does not recollect having observed the pregnancy, though he says Lady Jane's common dress was a loose gown and hoop, which might have concealed it from him. He farther says, that, upon her return to Reims, "he thinks he remembers she looked paler in the face." The comparison, therefore, which was endeavoured to be made between these two witnesses, and their depositions, was injurious and unfair. It is plain, that the story told by both is substantially the same, tho' the one remembers more circumstances than the other. It appears from a variety of *non memini's* in General Maclean's oath, as to other circumstances, which must have been well known to him at the time, that his memory is far from being correct. Mr. Mackenzie is a gentleman of unexceptionable integrity, and had he not been conscious in his own mind of the truth of these circumstances which he relates, he never would have appealed to the testimony of another living witness, who had equal access to know them.—Though Mr. Maclean does not now recollect, that the pregnancy was known to him before Lady Jane went to Paris, he must undoubtedly have observed traces of it at the time, otherways it is very singular, that he should have entertained no suspicion or doubt, when Lady Jane afterwards made her appearance with twins.

Def. pr. 364,
C.
366, A, D.

p. 364, G.
364, C.

One capital circumstance both these gentlemen agree in, viz. that they lifted Lady Jane in their arms when they put her into the coach. It does not appear, that Mrs. Hewit, or any of the other female passengers, were assisted in so unusual a manner, and therefore it is plain, that there must have been some reason for observing this ceremony with regard to Lady Jane; at the same time, if the apparent size of her belly had been artificial, it is extremely improbable that two strangers would have been permitted to approach her so nearly.

But indeed the pregnancy through the whole of its stages, is further put beyond doubt, by the evidence of Lady Jane's attendants and servants, unless a very violent supposition can be adopted, viz. that they were all and each of them accomplices in the imposture, or all of them now guilty of wilful prevarication and perjury. The first evidence which the defender shall appeal to on this head, is that of Mrs. Quibel, the wife of Pierre Quibel, who had been servant

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OF THE
ATTEN-
DANTS.

Def. pr.
489.

servant to Sir John and Lady Jane during their residence at Aix-la-Chapelle, and probably came to their service in September 1747, when Lambinon left them. Depones, " That she knows from her husband, that Lady Jane Douglas proposed to him, to carry him with her when she left Aix-la-Chapelle.—Depones, That her husband told her, that Lady Jane Douglas, on leaving Aix-la-Chapelle, went to Liege, but that the said Pierre Quibel did not go there with her. Depones, That the reason for which the deponent's husband did not go with Lady Jane Douglas is, that he was a deserter from France, and that he would not expose himself to be there taken up; and this she learned from her husband himself. Depones, That since the departure of Lady Jane Douglas from Aix-la-Chapelle, the deponent's husband, after their marriage, received two letters, signed by Mr. Stewart, which the deponent heard read by her husband; that, by these letters, Mr. Stewart informed the deponent's husband, that it would not be difficult to obtain the discharge of her, the deponent's said husband, because he had not been given up as a deserter; that this would cost six louisdores, and that he, Mr. Stewart would willingly solicit his discharge. Depones, That in one of these letters, Mr. Stewart made mention, that Lady Jane was brought-to-bed of two male-children. Depones, That having then asked her husband, if Lady Jane Douglas was with child on leaving Aix-la-Chapelle, *her husband answered that she was.* Depones, That the husband of her the deponent expressed his joy, on hearing by this letter, that Lady Jane Douglas was brought-to-bed of two sons.

Def. pr.
477, D.

This story is confirmed by the deposition of Madame Gilleson, who depones, " That the footman who served these persons in the house of her the deponent, was called Pierre; that he did not follow them at their departure, but remained at Aix, where he was married, and the deponent has seen him sundry times after the departure of these persons. Depones, That she heard at the time from this footman, that he could not follow these persons into France, because he was a deserter from the French service; the deponent adds, that she does not know what is become of him."

From these depositions, with regard to Quibel, two things are to be observed, *1mo*, That he knew and believed in the pregnancy. *2do*, That Sir John and Lady Jane, when they left Aix-la-Chapelle, were desirous that Quibel should have accompanied them, and that he was only prevented by the accident of being a French deserter.—Unless therefore we can suppose, that Pierre Quibel was likewise in the secret of the pretended fraud, it is plain, that the appearances of pregnancy at Aix-la-Chapelle must have been natural, and such as usually happen, otherwise it is difficult to conceive, that a servant, living in the family

mily, who had every day occasion to see Lady Jane, could have been deceived into a belief that she was with child.—It is also extremely singular, that they should have been so desirous to carry this man along with them, in order to be an eye-witness to the further execution of that supposed scheme of imposture, which it was so necessary for them to hide.

But, indeed, this is not more unaccountable, than another fact of the same kind, which appears from the evidence, viz. that before leaving Aix-la-Chapelle, they solicited Lady Wigton to come and live with them, where they should find it most convenient to reside. Lady Wigton herself deposes, “That she thinks, after they went away,^{Ser. p. 27, C.} “Lady Jane wrote to her from Reims, and both then, and before their “leaving Aix-la-Chapelle, solicited the deponent to come and live at “the same place with them.” And Miss Primrose says, she remem-^{Def. pr. 358. B.} bers to have then heard from Lady Wigton, that Lady Jane was going to some place in the country for cheapness, and that she, Lady Wigton, was to follow her to such place.—If Lady Jane’s appearances of pregnancy were fictitious when she left Aix-la-Chapelle, and if she was then carrying on one of the most enormous frauds that ever was committed, it is amazing that she should have inclined to carry along with her so many spies upon her actions, in order to facilitate a discovery, which, in its own nature, was hardly avoidable.

But the evidence of Mrs. Hewit, Isobel Walker, and Effy Caw, is still more direct, and is, indeed, such as renders it absolutely necessary for the pursuers to object to their testimony.—Besides the outward appearance of largeness of belly, there are certain well known and distinguishing characters of pregnancy, which the female-attendants of a woman with child cannot possibly be ignorant of. In this case, it is clear beyond dispute, that Mrs. Hewit, Isobel Walker, and Effy Caw, had all of them that access to be acquainted with the situation of Lady Jane, that to suppose either ignorance or mistake in any of these three persons, is utterly impossible.

That Mrs. Hewit has deposed in direct terms to the pregnancy,^{Ser. p. 11, C.} with all its appearances, of largeness of breasts, &c. is admitted on all hands, and her evidence on this head need not be recited.

Isobel Walker had equal access to know the true state of the fact, and she has two several times, upon her solemn oath, attested it in the most positive manner. After mentioning the conversation with Mrs. Tewis, when the first observations were made with regard to Lady Jane’s condition, she proceeds in this manner: “That the deponent^{Ser. p. 18, E.} “soon saw that such was the case, for Lady Jane had all the symptoms of a woman in that condition, which the deponent had access to know, as she was the person that put Lady Jane to bed, and “helped

Ser. p. 19, B.

Purs. pr. 50,
A.

" helped her out of bed in the morning, and saw her, upon these oc-
 " casions, without any cloaths: that when Lady Jane was in the 7th
 " month, she was become so unwieldy as not to be able to go to bed
 " without assistance, which the deponent gave her, and by means of a
 " stool, she slept in and out of bed. Depones, that Lady Jane was
 " uncommonly big, and that, from the appearance of her belly
 " and breasts, which the deponent had so frequent occasion to see, it
 " was impossible for the deponent to have been deceived or mistaken
 " of the condition of Lady Jane: that Lady Jane was naturally flat-
 " breasted, and very thin, but when with child, her breasts rose to a
 " great size." She deposes also to the following incident at Sedan, in
 " their way to Reims: " That the next morning after their arrival
 " there, the landlady came into Lady Jane's room, where there were
 " none present but my Lady and the deponent: that the landlady,
 " after some usual compliments, said to Lady Jane, that she hoped she
 " had not far to travel, for that she observed that Lady Jane was near
 " her time: on which Lady Jane said, Pray how do you know?
 " The landlady answered, that though she had not seen my Lady's big
 " belly, she knew by her face that she was near her time: that, what
 " the landlady said was in French, of which the deponent had some
 " knowledge at that time, though not so much as to know perfectly
 " what passed, but enquired of my Lady, who gave her the account
 " as above deposed on, immediately after the conversation past: that
 " the deponent understood so much French as to know, that the land-
 " lady then said, that my Lady was with child: that the landlady
 " was a married woman, and had several children."—Examined as a
 " witness for the pursuers, she depones, " That so far as she remembers,
 " the beds both in Aix-la-Chapelle and Reims, were of the ordinary
 " height of beds in this country, and that the deponent never saw
 " people in health make use of stools to step into their beds in these
 " countries, but that the deponent's assisting Lady Jane with a stool,
 " was because she was very big and unwieldy; and that the deponent
 " never saw any person in that condition bigger; by which the depo-
 " nent means, the condition of a woman with child. Depones, that
 " she, the deponent, was the person who shifted my Lady in the
 " morning, laced her stays or jumps, and helped her to her morning-
 " dress, and undressed her at night; and that Effy Caw, the other
 " maid, attended her when she put on her robe, and dressed her head
 " before dinner: that Lady Jane had, in her seventh month, given o-
 " ver wearing stays; and that her mantua-maker at Aix-la-Chapelle
 " had made a bone wastecoa or jumps for my Lady, which she wore
 " thereafter; and that Lady Jane did not wear a bed-gown when in
 " bed. And upon the defender's interrogatory, depones, *That she had*
 " occasion

“ occasion frequently to see Lady Jane’s naked breasts and belly, both before leaving Aix-la-Chapelle, and after they came to Reims; and that the deponent has had her hands upon Lady Jane’s naked belly, and found her with live child; and that this she would depone, if she was going to step into eternity, whatever wretches may say to the contrary: and that the other maid, Effy Caw, if she was alive, would swear to the same purpose with the deponent; for the deponent remembers, that one day at Reims, she told the deponent, that having been pinning down my Lady’s robe, she felt the child move in Lady Jane’s belly; that my Lady pushed Effy Caw away, saying, she would put in the pins herself, and that my Lady’s face turned red; and Effy Caw, in telling the story to the deponent, said, that my Lady could not be more bashful, if she had been with child of a bastard.”—She further depones, “ That one day, when at Aix-la-Chapelle, and the deponent happened to be in Sir John’s room, Lord Crawford, who had been visiting my Lady, came into Sir John’s room, and, in the deponent’s hearing, said to Sir John, *You need be under no concern John, about Lady Jane, for she is with child, and I have very good skill; from which the deponent came to be satisfied, that Lord Crawford had been previously acquainted of the marriage.*”

Purf. pr. 52,
B.

That Effy Caw, tho’ turned off by her mistress, and piqued at her on that account, did uniformly persist in maintaining the truth of the pregnancy, is also clear from the proof. Mrs. Hepburn of Keith depones, “ That Effy Caw, above mentioned, was dismissed Lady Jane’s service, after Lady Jane came to England, as the deponent thinks, and came down to Scotland, and applied to the deponent for service: That she recommended her accordingly to wait on the deponent’s niece, Miss Bruce; and she afterwards served the deponent’s daughter-in-law, Mrs. Hepburn, went to England with her, and died there: That when she was in these services, the deponent heard her frequently declare, that if she were to step next moment into eternity, she would declare that Lady Jane, her mistress, was with child; and as there was some talk, at that time, that the children were not Lady Jane’s, she wished that her oath might be taken concerning that matter; and the deponent had the more regard to this, that she seemed to be a little piqued at Lady Jane’s turning her from her service. Depones, That Effy Caw told the deponent, as the reason why she was so positive of Lady Jane’s being with child, that generally she dressed and undressed Lady Jane, when she was in her service: That the deponent knows that the foresaid Effy Caw and Tibby Walker remained at Reims when Lady Jane went to Paris to be delivered.”

Service, p.
9, G.

Mrs. Ricart Hepburn depones, “ That she was acquainted with the deceased Effy Caw, who went abroad with Lady Jane Douglas as
“ her

Dei. pr. 382,
A.

“ her woman, and that she, Effy Caw, came to serve the deponent
 “ some time after she left Lady Jane’s service, and that she was about
 “ a year the deponent’s servant : That she has heard Effy Caw speak
 “ of Lady Jane’s pregnancy as a thing which she, Effy Caw, made no
 “ doubt of. Depones, That she often spoke of the pregnancy, and of
 “ her being fully satisfied of the defender and his brother being Lady
 “ Jane’s children ; and remembers, that the deponent being with
 “ child, and complaining of the straitness of her gown, Effy Caw de-
 “ fired her to do what she had formerly done to Lady Jane, when
 “ with child, namely, to slit up the lining of the back of her gown,
 “ and to put in pye-holes in it, and lace it up, which Effy Caw ac-
 “ cordingly did ; and that there were other particulars with respect to
 “ Lady Jane’s pregnancy, and the children, which Effy Caw mention-
 “ ed to the deponent, but which she does not now recollect.”

Def. pr. 382,
 E.

Walter Peters depones to his having met with Effy Caw, at the
 house of John Caw, clerk to the secretary of excise, about half a year
 before Lady Jane Douglas’s death : “ That Effy Caw, whom the de-
 “ ponent had not seen before nor since that meeting, said, that she
 “ had been a servant of Lady Jane’s, upon which the deponent asked
 “ her, if she had been abroad with Lady Jane? She answered, that she
 “ had ; the deponent thereupon asked, If she was present at the birth
 “ of the children, as that had been a topick of publick conversation?
 “ She said, she was not ; that she had been left behind at some town, the
 “ name of which the deponent does not remember ; nor does he think
 “ that Effy Caw gave any reason for her having been left behind ; but
 “ she told the deponent, that Lady Jane had all the symptoms of preg-
 “ nancy that ever she knew a woman have that was with child ; and
 “ that she had access to know that, as she dressed and undressed Lady
 “ Jane ; and added, that she had no occasion to tell a story, or any
 “ thing but the truth, as she had left Lady Jane’s service, and was go-
 “ ing to England in two or three days, and would probably never see
 “ Lady Jane again.”

Such is the direct evidence of Lady Jane Douglas’s pregnancy, in its
 different stages, from the month of November downwards, at Aix-la-
 Chapelle, at Liege, and at Reims, to the time of her setting out on the
 2d July, in order to be delivered at Paris. It amounts to this, that all
 who were acquainted with Lady Jane, or in company with her during
 that period, who had access to be near her person, who gave any at-
 tention to her shapes, or to her looks, understood and were convinced
 that she was really with child ; that the exterior marks of pregnancy
 appeared very visible and striking to those who had occasion only to re-
 mark her outward appearance ; and that others, who had the opportu-
 nity of a more narrow investigation, by seeing her breasts and belly
 uncovered

uncovered, or by feeling her naked belly with their hands, were satisfied that she was with live child, and that there was no deception or disguise in the matter.

The memorialist shall, in the next place, consider the objections offered by the pursuers to the proof of pregnancy, in the order in which they were stated.—It was said, that all the appearances might have been counterfeited, those only excepted which had been deposed to by Madame Tewis, Mrs. Hepburn of Keith, Mrs. Hewit, Isobel Walker, and, at second-hand, from Effy Caw: That, with regard to Madame Tewis, her notorial declaration was not legal evidence, and was exceptionable in various particulars; that Mrs. Hepburn had sworn falsely; that Mrs. Hewit was an accomplice, and was perjured; that Isobel Walker was either originally an accomplice, or afterwards prevailed on to commit perjury (but as to this the council for the pursuers were divided); and that Effy Caw was a young girl, and had been imposed on.—The conduct of Lady Jane was also said to be, in sundry particulars, inconsistent with her pregnancy; and the negative evidence of certain witnesses was founded on, who do not remember to have observed her with child. Lastly, it was said that she might have miscarried, or that she might have had all the usual symptoms of pregnancy, from deceptive causes, without being with child.

With regard to the first set of objections founded on a supposition, that the only witnesses to the real symptoms of pregnancy are Madame Tewis, Mrs. Hepburn, Mrs. Hewit, Isobel Walker, and Effy Caw; the memorialist does, in the first place, say, that the pregnancy does not rest solely upon their evidence, but, on the contrary, is strongly attested by a variety of other witnesses, who had access to remark it, and against whom no objection whatever has been offered, particularly, by Mrs. Greig, Madame Negrett, Mr. Hepburn, Baron Macelligot, Abbé Hibert, Lieutenant Mackenzie, and others.—2dly, When the objections against the above five persons are examined, it will be found, that all and each of them admit of the most satisfying answer.

The memorialist did by no means expect to have heard the declaration of Madame Tewis objected to as evidence, when the pursuers themselves have, from the beginning of this cause, used so much argument on the latitude of proof, in what they are pleased to denominate a question of dark and intricate investigation. They forget how much weight they have laid on proofs, which, in other cases, would have been utterly incompetent. But indeed the declaration of Madame Tewis, is, in its own nature, a legal and judicial document, formally attested by an officer of the law in the country where it

was taken; and as the witness herself it now dead, it must, in every court, have the effect of evidence, because it is the best evidence which the nature of the case admits of; and further, it is remarkably corroborated in all its circumstances, by a variety of depositions and proofs above recited.

But the *credibility* of this declaration was also objected to.—Mrs. Tewis does not mention the different houses in which Lady Jane lodged at Aix-la-Chapelle, and it was insinuated, that she meant thereby, to convey an idea, as if Lady Jane had constantly resided in her house. It was further said, that, besides the declarations of Madame Tewis, Joseph Tewis and Bleyenheufft, which now appear in proof, two others were taken at the same time, viz. those of Imhoff the tailor, and Pierre Busch, his servant, which do not now appear, and which Madame Tewis has taken the liberty to suppress, as making against the pregnancy.

Answer.

Mrs. Tewis in her declaration does not enter into any long detail, because no party was present to put questions to her.—She thought it sufficient to certify in general her knowledge of the pregnancy, together with her *causa scientiæ*, arising from the symptoms she had observed. Neither Sir John nor Lady Jane, in their letters to her, which

Purf. pr.
1053. E.

are in process, give her any instructions, or desire to know any thing from her but the simple truth, with regard to her knowledge of the

Purf. pr. 813.
B.

pregnancy. Sir John says, “You will have the goodness then, Madame, to be pleased to declare before a notary, such circumstances, knowledge, and belief, as you may have concerning that affair.”

Purf. pr.
1053. E.

And Lady Jane writes in these words: “I should be happy to have still the pleasure of hearing from you, with such declaration as you can make concerning my situation when at Aix-la-Chapelle, *as well when in your house as afterwards, when I was obliged to lodge elsewhere, to make way for the plenipotentiary.*” Mrs. Tewis accordingly did so, but she appears not to have thought it necessary to mention these different houses, or to give an account of all Lady Jane’s motions when at Aix-la-Chapelle.—It shows to what desperate suppositions the pursuers are driven, when they argue, that Mrs. Tewis, a woman of unexceptionable character, was guilty of wilful disguise, or concealment of the fact in this declaration. The circumstance of her visiting Lady Jane very frequently in Madame Scholl’s is proved by Madame Scholl’s deposition, and her going to take leave of Lady Jane on the morning of the day on which Lady Jane left Aix-la-Chapelle, and at a very early hour, when Lady Jane was still undressed, is confirmed by Madame Gille-

Def. pr. 475,
G.

son; and indeed she does not stand single in any one circumstance of her declaration. It is most injurious to suppose, without any evidence, and even contrary to evidence, that she has told a falsehood, and it

is

is no less so to insinuate, as if she had suppressed the declarations of Imhoff and Busch. The probability is, that Busch is mistaken in saying, that he and Imhoff gave declarations at the same time with Madame Tewis, Joseph Tewis, and Bleyenheufft. From the deposition of Bohnen, the son of the notary who attested the declarations produced, it seems very plain, that there never were more than three of them. He depones, "That in quality of son and heir, he has in his possession, the minutes and protocols of the acts past before the deceased Mr. Bohnen, his father, in the quality of imperial notary.— Depones, that among the number of these he finds, the three acts of declaration above mentioned." He further depones, "That he has searched among the minutes and registers which he has in his possession, as heir of his said deceased father, for the minute of a declaration, said to have been passed before his father by Imhoff, master-taylor for women in this town, and Busch, apprentice to the said Imhoff, touching the pregnancy of Lady Jane Douglas. Depones, that having made the search as exactly as it was possible for him, he has not been able to find the said minute; and he is morally certain, that it is not among the other minutes and papers presently in his possession, which his father left him in his closet. Depones, that since the death of his father, he does not believe that any body has addressed themselves to him, for communication of an act passed before his father, of which he, the deponent, has not found the minute." He indeed, in the end of his oath, says, that some of his father's papers were in the hands of the chapter of the royal church of Aix-la-Chapelle, but Mr. Wiffender, secretary to the chapter, depones, "That he made a search among all the papers, formerly belonging to Bohnen, in the chapitre, and that he has not found any minute of the declaration given or signed by Imhoff or Busch, or any papers concerning these affairs."

Def. pr. 484,

p. 492. C.

Def. pr. 496.

It seems plain therefore that Busch is in a mistake as to this circumstance, otherways the minute of his declaration would have been found. Had there been any such declarations, there could have been no reason to have kept them up, as it appears from Busch's deposition in the cause, that he confirms Mary Bleyenheufft's account of the matter in every particular; for he expressly deposes to the widening Lady Jane's stays three different times, and that from thence he was led to suspect her being with child, and that he communicated his suspicions to his master, who told him to hold his peace. He indeed had no access to know the pregnancy from ocular observation, as it is not common for a lady, who has servant-maids or attendants to lace her stays, to use a taylor's apprentice for that purpose.

As

Mrs. Hepburn.

As to Mrs. Hepburn's oath, the pursuers council seemed to be doubtful how to manage it. They did not in express words accuse her of perjury, but they did it in substance.—They said she had sworn to what was false; that she had a warm imagination, and that she was contradicted by the evidence.

Answer.

The memorialist has not been able to discover any one passage in the evidence which contradicts her. She is a woman of unexceptionable character, good sense, and distinct in her ideas. She is unconnected with the defender, and could have no earthly temptation or motive to exceed the truth. The facts to which she bears testimony are such as fell under her own observation. She depones, "That Lady Jane's pregnancy was the more observable to her, that, when she saw her at the Hague she was a slender thin woman, in so far as that she scarce appeared to have any breasts at all." And from her intimacy with Lady Jane, it may be supposed that she would give particular attention to those unusual appearances which she had at Aix and at Liege.—From the posture in which she saw Lady Jane, it was impossible she could be deceived. Lady Jane was not apprised of her coming in; her night-cloaths were laid open, and her breasts exposed. Not only the size of her belly was observed, but the swelling of her breasts, a symptom which never attends false pregnancy. The witness judged from comparison, and could not be mistaken. The circumstances therefore deposed to by Mrs. Hepburn must either be true, or she is guilty of flat perjury; a supposition which cannot gain credit with any person who knows herself, or is acquainted with her character.

Mrs. Hewit.

Mrs. Hewit was next objected to upon the footing of being an accomplice; and it was further said, that she had sworn falsely, and was contradicted in a variety of particulars.

As to the general accusation of being an accomplice, this proceeds on a *petitio principii*, that an imposture was committed, which is the very fact incumbent on the pursuers to prove; but, until they do so, they cannot be allowed to set aside the evidence of Mrs. Hewit, or of any one witness in the cause, upon a mere general averment, that Sir John Stewart and Lady Jane Douglas were guilty of a crime, and that the witness objected to was privy to it. If Mrs. Hewit's deposition be consistent in itself, and not clearly refuted by other evidence, it will not avail the pursuers to say, that she was in the confidence of Lady Jane, or a partaker in the fraud, unless they make out their charge, that the defender is supposititious, in which case there is an end to the whole affair.

The pursuers, in their publications in France, and before going to proof, used the freedom to throw out insinuations against the general character of Mrs. Hewit, and were pleased to bestow on her the epithet

thet of *fille perverse, or wicked woman*. It does not appear, that, in their volume of proof, they have attempted to justify so scandalous an aspersi^{on}. A variety of persons, on the contrary, who had best access to know her, have bore testimony to her integrity and good behaviour. Walter Colvill depones, "That he has been well acquainted with Mrs. Hewit for about forty years; that she is his relation, though not near, and that, as far as the deponent ever saw, she was a woman of probity and veracity." Mr. Harper, a clergyman, who has been well acquainted with her for many years past, depones, "That he does verily believe Mrs. Hewit to be a woman of truth and veracity, and a sincere consciencious woman, so far as he could observe." Mr. Alexander Wood, surgeon, gives her the like character.

Purs. pr. 297,

E.

Def. pr. 452,

A.

Def. pr. 452,

E.

Mrs. Hewit's character stands therefore unimpeached by the evidence. She had lived for the most part of her life in the family of the Marchioness of Douglas, and of Lady Jane Douglas. Your Lordships cannot suppose, that persons of their high rank, and who were remarkable for their good sense and virtuous dispositions, would have made a companion of this woman, had they not been fully satisfied of her being worthy of that friendship with which they honoured her. It was unbecoming in the pursuers, to throw out those injurious reflexions, and, as they have not supported them by evidence, your Lordships will give credit to the oath of Mrs. Hewit, until one of two things appear, either, *1mo*, That a fraud was committed, and that she was an accomplice in it: or, *2do*, That she has been guilty of such contradictions or falsehoods, in material parts of her evidence, as are sufficient to set it aside. The first will depend on the judgment which your Lordships are to form on the whole of the evidence; the last, on a discussion of certain particular objections, which are made to her oath, and which the memorialist will beg leave to reserve to another branch of the cause, where her evidence is of more importance.

With regard to the two servant-maids, Isobel Walker and Effy Caw, the pursuers have been greatly at a loss, and seem still undetermined what system to adopt. In the pleading upon the relevancy, two council spoke on behalf of the pursuers.—One of them maintained in express terms, that Isobel Walker was a *confederate* in the plot, the other was equally positive, that she was *no confederate*, and that she was left at Reims, on purpose that she might not know what was to go on at Paris. In the late pleading on the proof, one of the council for the pursuers fairly acknowledged, that his brethren were divided in opinion, some of them for making her an accomplice, others a person imposed on. The council who spoke last on that side, took up the former ground; he insisted, that she was an accomplice from the beginning;

Servant-
maids..

ginning; that the other maid, Effy Caw, was imposed on, and that Isobel Walker was left at Reims, for no other reason but to bear her company, and prevent her from suspecting. Your Lordships will judge from this vacillancy of argument, and uncertainty of opinion (of which some other instances will in the sequel be noticed) what sort of idea these gentlemen have formed of their own cause, and what notion they have of those clear and infallible proofs, which were once given out for establishing this imposture.

But, since the pursuers have been pleased to take up this twofold ground, with regard to Isobel Walker, it will be necessary to consider the evidence with regard to her in both views. If she was an accomplice from the beginning in this pretended imposture, the leaving her behind at Reims, when there was so much occasion for her assistance at Paris, was a very extraordinary piece of management; and the reasons assigned for it by the pursuers are by no means satisfying. It is in the first place extremely singular, that one of the maids should have been intrusted with the secret, and not the other. The difference in their ages was not so very remarkable, the one was a woman about twenty, the other about the age of twenty-nine, and the general character and behaviour of Isobel Walker did not render it more probable, that she would concur in the perpetration of so great a fraud, than the other girl, who from her youth might perhaps have been easier seduced.

The pursuers have not made the smallest attempt against the general character of Isobel Walker. On the contrary, it is fully in proof, that she has all along been considered as a woman of remarkable integrity of character. Mr. William Hogg, merchant in Edinburgh, depones,

Def. pr. 453,
E.

“ That he knows Mrs. Glas, (*i. e.* Isobel Walker, spouse to Mr. Glas, gardener at Newliston,) and has been acquainted with her for several years; that she was two or three years servant to the deponent, and was married out of his house to Mr. Glas five years ago; and depones, that he believes her to be a woman of truth and veracity, and that he would take her word as soon as any person he knows.”

Def. pr. 453.

—“ Miss Anna Hogg depones and concurs with the said Mr. William Hogg in all he has said.”

Purf. pr. 297,
E.

Walter Colvill depones, “ That he is acquainted with Mrs. Glas; that he has been so for about twenty years, and that he thinks her a woman of truth and veracity.”—She was married some years ago to a person of reputable station and in good circumstances, and she is esteemed in the neighbourhood where she lives as a very decent, worthy and sensible woman. The memorialist regrets extremely, that this witness was not examined in presence of your Lordships; her appearance of sincerity and candor upon her examination was such, that he

is morally certain it would have carried conviction home with it to the minds of your Lordships. An observation was made in the pleading with regard to one passage of her oath, which has the appearance of keenness. It is taken down in this manner: depones, "That she had occasion to see Lady Jane's naked breasts and belly, both before leaving Aix-la-Chapelle and after they came to Reims; and that the deponent has had her hands upon Lady Jane's naked belly, and found her with live child; and that this she would depone if she was going to step into eternity, whatever wretches may say to the contrary." These last words were taken hold of, and the council even endeavoured to turn them into ridicule, by saying, that they were the common expressions used by Mrs. Hewit, Sir John, and all the family. The insinuation was injurious, and the memorialist appeals to the commissioner, and to every person present, that nothing could be more natural, and nothing more decent, than the way in which they were uttered. They were not even meant to be a part of her deposition, but, during the time that the commissioner was dictating her oath, the witness, full of the consciousness of sincerity and truth, could not help using some strong expressions, which, at the desire of the agent, then attending for the pursuers, were taken down.

But, to return to the hypothesis with regard to the maids, supposing the one to have been an accomplice, and the other not, a thing highly improbable in itself, and contradicted by the general character of Isobel Walker, it was still an absurd conduct in Sir John and Lady Jane to leave the accomplice behind them, whose service they had occasion for, merely in order to keep company with the other person who was not an accomplice. Nothing was more easy than to have separated them, under pretence that there was not room for Effy Caw; that, as their stay was to be short, they had no occasion for her, or that it was necessary to leave her at Reims to take care of their cloaths and trunks. These and a thousand other excuses might have been fallen on; and, if we can possibly figure, that Effy Caw was imposed on during the whole course of the pregnancy, down to their setting out for Paris, the imposition could easily have been continued during the short time of their absence, even without leaving Isobel Walker to bear her company.

But indeed the letters from Mrs. Hewit, while at Paris, to the servant-maids at Reims, afford absolute demonstration, that if there was any imposition in the case, both the maids were *in pari casu*, and equally ignorant of it. The memorialist shall beg leave to appeal to one of them, by way of a specimen: "Dear Tibby and Effy. This will be the
 " welcomest letter iver any of you received. The last day I writ to you
 " Tibby, I told you your Mrs. was very uell, as I thoght; so far from
 " that,

" that, she had been ill the wholl neght, and sad not a word tell tuall
 " a klok, which was 4 ours after your leter wint af, then I think she
 " was in soch a way, as I could wisht not to a been witnes to, tho I
 " do belive many is been worc with on; and she produced 2 lovly
 " boys; you may belive the confusion I have been in, sinc haven no
 " thoght of more than wan, tho Tibby Walker was so moch a con-
 " juerour as to tell me she thoght she was with two, still my thoghts
 " joind Effe's; they are two lovly creters, but the youngest very small
 " and weakly; so the doctor beght he might be sent to the country as
 " soun as possible. Your Mr. and I had to go not a litell way befor
 " we got a right nurse; that we ould pert with him, to at last we got
 " on of the clineft best woman iver you sa, a farmers wife, so I hop
 " he shall do very well; he agreeing so well, we was fond to find the
 " other, who is a very stordy peace. Som days after, your Mr. wint
 " out to see him, and found the nurse drunk, apon which he sint the
 " coach for me, and we brought him with hos.—We have got a feen
 " milk-woman; tell we geet a right norc, for your Mr. and Mrs. is re-
 " solvd he shall never go out of ther sight; she is recovering most sur-
 " prisingly well, not on back-going howr. So soun as the ninth day
 " was over, ther was no confiningn her longer to her bed, the heat be-
 " ing so vilint. In short, Tiby and Effe, all is to a wish, but I am in
 " such confusion, and is so hurryd, tell we get a right norc; that I can
 " say no more, but shall writ to you soun. You are both kindly re-
 " membent. I am both your friends and well wishers, &c."

P. S. " I have thoght it two months since I left you all—The hurry
 " I was in last writin, I blive I dated my letter the 11 instead of the 10.
 " which was the happy day. Adeu dr. Tiby. Mrs. Andrews gives a
 " very good account of you both, and says you are going finely on in
 " the French. Mind us sincerely to her."

Paris, July
 22d.

The others are in the same stile, all of them Mrs. Hewit's compo-
 sition, and wrote in that natural manner, which deceit could not possi-
 bly have dictated; at least, we must suppose Mrs. Hewit to have been
 the greatest mistress of dissimulation that ever existed on the face of the
 earth, if she could write such letters to two people conjunctly, one of
 whom she knew to be in the plot, the other perfectly ignorant. The
 circumstances of Tibby Walker's conjecture about the twins, and Mrs.
 Hewit and Effy joining together in thinking, that she had only one
 child, shows, that the pregnancy had often been the subject of conver-
 sation among them, and has a most natural appearance. The supposed
 correction of the date in the postscript is equally natural, and was not
 in the least necessary, if Tibby Walker was a confederate. It will be
 observed too, that, in the next letter, of date 26th, she apologizes to
 the maids for their not being sent for, a precaution which was surely
 unnecessary.

unnecessary, if the young, the ignorant, the unsuspecting Effy Caw was the only person to be imposed on.

But, after all, upon what evidence, or upon what foundation is it, that one half of the council for the pursuers would endeavour to make Isobel Walker an accomplice in the imposture? They have no earthly ground other than this, that she is a strong witness to every real symptom and appearance of pregnancy. If this be a good reason, why not join Madame Tewis, Mrs. Hepburn of Keith, and Mrs. Greig, as confederates in this wicked scheme? and why leave out Effy Caw, because she was a few years younger than Isobel Walker? Effy Caw was old enough to know the difference between a woman with child and a woman not with child; she had equal opportunities with Isobel Walker of seeing Lady Jane at times, and in situations, when no disguise could avail her. Had Lady Jane's pregnancy been suddenly assumed, had it been equivocal, had it been desultory, appearing at one time, laid aside at another, doubtful at Aix-la-Chapelle, monstrous at Liege, and dwindled away at Reims, is it possible that such strange phenomena could have escaped the observation of a woman of twenty, daily attending upon Lady Jane, dressing and undressing her? Or can it be figured, that Lady Jane would have behaved in so absurd a manner, as to have had this woman constantly about her, if she was not really with child, but only now and then putting on the appearance of it?—If Isobel Walker was an accomplice, Effy Caw was likewise in the plot; for it is proved, that her assertions with regard to the pregnancy, and her opportunities of knowing it, were just the same with Isobel Walker's; but the leaving them at Reims, and the letters wrote to them by Mrs. Hewit, are totally inconsistent, with the supposition that either one or other of them had the least concern in the pretended imposture.

But, say the pursuers, upon comparing the oaths of Mrs. Hewit and Mrs. Glas, and the declaration and oath of Sir John Stewart, there are certain particulars, in which, though now proved to be false, the whole of these three persons concur; and this connexion among them shows plainly that Isobel Walker was either an accomplice from the beginning, or that she has since been prevailed on to support the cause of the defender, by deposing to falsehoods in concert with Sir John Stewart and Mrs. Hewit. The memorialist, without admitting either of these conclusions, shall proceed to consider the several particulars from which this combination is inferred.

1mo, It is said, that all the three have mentioned Lord Blantyre as at Aix-la-Chapelle during the pregnancy, and in the knowledge of it, when in fact he was not there at that time. This pretended concert is

CIRCUM-
STANCES
FROM
WHICH
CONCERT
IS INFER-
RED
AMONG
THE WIT-
NESSES.

1mo, Circum-
stance about
Lord Blan-
tyre.

of so trivial a nature, that it is surprising the pursuers should endeavour to take hold of it. Mrs. Hewit does not affirm that Lord Blantyre was a witness to the pregnancy; but, after mentioning Lady Jane's having become with child at Aix-la-Chapelle, she adds, "*That while they staid at Aix-la-Chapelle, there were many Scotch people there, particularly Lady Wigton and Miss Primrose, who lived with her, and one Mrs. Greig, Lady Wigton's woman, who at present is in Edinburgh; and, after saying that fundry people had observed the pregnancy, she adds, that at the same time, the late Earl of Crawford and Lord Blantyre were both at Aix-la-Chapelle, and Lord Blantyre lived in the house with Lady Jane, and both of those Lords were every day with her.*" It will be observed, that she only mentions narratively who were the people then at Aix-la-Chapelle; and in fact it is certain that Lord Crawford was there during that whole winter, and that Lord Blantyre was also there for some time, and lived in the same house with Lady Jane, though he had left it before the pregnancy commenced.—This circumstance, together with his afterwards standing god-father at the defender's baptism, may have led Mrs. Hewit, in recollecting at such a distance of time, to think that he remained longer at Aix-la-Chapelle than he in fact did, and that he was even there after the pregnancy commenced, though she does not say that this was the case, but only mentions in general, that he was at Aix-la-Chapelle.

Sir John Stewart indeed, in the *scroll* of a letter to the Dutcheß of Douglas, which is produced, mentions Lord Blantyre as at Aix after the pregnancy commenced; a mistake which he might naturally have been led into, from the circumstances above mentioned. But what argument can be founded on a scroll, the memorialist submits to your Lordships; more especially when it appears from Mr. Loch's oath, that Sir John made corrections upon it before sending the letter to the Dutcheß; and the original letter does not appear.

As to Isobel Walker, she only says, "That Lady Jane was visited by several British who were then there, particularly, the Earl of Crawford, Lady Wigton, Lord Blantyre, and Miss Primrose;" which is true, though they were not there all at the same time; and she does not say that Lord Blantyre observed the pregnancy. So that this supposed concurrence is perfectly immaterial, and as to Isobel Walker has no foundation in fact.

It was said that Isobel Walker, in her after deposition as a witness in the cause, endeavoured to support her former story by deposing as follows:
 Purs. pr. 52, D. Being interrogated for the defender, and shown that part of her former oath, where she mentions, that, at Aix-la-Chapelle, Lady Jane went by the name of Lady Jane Douglas-Stewart, depones, "That now she does not think that Lady Jane was publickly known at Aix-la-Chapelle,

“ Chapelle, by the name of Lady Jane Douglas-Stewart, but only by
 “ the name of Lady Jane Douglas; but that the deponent remembers,
 “ that while they were at Aix-la-Chapelle, she had occasion to see some
 “ letters addressed to Lady Jane, under the name of Lady Jane Dou-
 “ las-Stewart; and she thinks these letters were from the late Lord
 “ Blantyre, who left Aix-la-Chapelle some time before they left it, and
 “ that the deponent thinks it was the address of these letters, that led
 “ the deponent in her former examination to say that Lady Jane passed
 “ at Aix-la-Chapelle under the name of Lady Jane Douglas-Stewart.”

—But your Lordships will observe that the witness here talks very un-
 certainly as to the person from whom these letters were received; nor
 was it possible that she could from her memory be exact in deposing
 to a circumstance of this kind at the distance of so many years. She
 had probably seen letters from Lord Crawford directed in that manner
 to Lady Jane, while at Aix, or from Lord Blantyre himself to Lady
 Jane, when at Reims; and it is impossible that her evidence can in the
 least degree be affected by so immaterial a circumstance.

The next particular of this kind, taken hold of by the pursuers, is
 a fact deposed to in the following manner.—Mrs. Hewit depones,
 “ That the two servant-maids were left at Reims, for want of money
 “ to carry them along, and that Lady Jane intended to have sent for
 “ them, but she did not get money soon enough: that, upon their
 “ coming to Paris, she endeavoured to persuade her banker to advance
 “ her thirty louis d’ores, which were to fall due at the Lammas follow-
 “ ing; and that, as he refused to do so, Sir John wrote to Reims to
 “ one Mr. Andrews, to whom they had been recommended, who or-
 “ dered his banker to advance the money, and that the very day it
 “ was paid, Lady Jane was brought-to-bed, which made it unnecessary
 “ to send for the servant-maids.”

2. Circum-
 stance about
 arrival of mo-
 ney the day
 of the birth.

Ser. p. 12, A-

Isobel Walker, in like manner, depones, “ That when Sir John and
 “ Lady Jane went to Paris, the deponent and Effy Caw were left at
 “ Reims: that the reason thereof was, Lady Jane was scarce of money:
 “ that she told the deponent she expected some money on their arrival
 “ at Paris, and that then the deponent and Effy Caw should be sent
 “ for: that, by a letter which the deponent received from Mrs. Hewit
 “ from Paris, she was informed, that my Lady had been disappointed
 “ of the money expected there, and was obliged to write to Mr. An-
 “ drews at Reims, for a supply of money, which Mrs. Hewit, by a
 “ second letter, acquainted the deponent was got upon the day that
 “ Lady Jane was delivered at Paris. Depones, that she received a
 “ letter from Mrs. Hewit, acquainting her of Lady Jane’s being de-
 “ livered, dated the 22d of July 1748, which she now exhibits, and

Ser. p. 19, G-

“ is

“ is marked by her and one of the judges: that this letter the deponent received previous to the one acquainting her of Mr. Andrews’s supply of money, in which letter Mrs. Hewit said, that though my Lady had a good deal to do with money, yet she believed she would send for the deponent and Effy Caw; but the deponent, in return wrote Mrs. Hewit, that as my Lady was now safely delivered, and had a nurse attending her, it was needless to put my Lady, in her present circumstances, to the expence of transporting the deponent and Effy Caw. And the deponent exhibits two other letters from Mrs. Hewit to her, the one dated the 26th of July, and the other the 12th of August 1748, which are now both marked as aforesaid, and which have been preserved by accident, the deponent having had many more, which were all lost or destroyed, before her having been cited as a witness.”

And Sir John, in his declaration, has also mentioned, that having been obliged to write to Mr. Andrieux for a credit of thirty louis d’ors, Lady Jane was brought-to-bed on the very day that this credit arrived.

Answer.

That the want of money may have been a reason for not taking the servant-maids along with them to Paris, and may likewise have been one of the reasons why they were not afterwards sent for, is extremely probable. The memorialist will have occasion hereafter, in treating of the delivery at Paris, and their transactions at that time, to show, that, notwithstanding a credit of 1900 livres, which they had upon a banker in Paris, they were very much pinched for money. At present it is only necessary to enquire, how far Isobel Walker has concurred with Sir John and Mrs. Hewit, in a falsehood about this money. Your Lordships will observe, that two things are said by Mrs. Hewit: 1st, That the servant-maids were left at Reims for want of money, and that the money from Reims did not come in time enough to send for them. 2dly, That it came the very day on which Lady Jane was brought-to-bed. Now, with regard to the first of these, the fact may be extremely true, as has already been said, only it appears from Mrs. Hewit’s letter of the 26th July, that there was this further reason for not sending for the maids, that, as Lady Jane was to go to the country in a short time, in her way to Reims, it became unnecessary to send for them. She says, “ She (i. e. Lady Jane) is recovered to a wonder not indid without the greatest care. She is still very weak and her doctor is ordered her to be sent to the country in eight days to make her perfectly fitt for her journey home, she was fully resolved to a firt for you both the time she was to stay but as the doctor is positive he will have her to the country, this being just Edinburgh no air houses all close to one another and she being resolved

Ser. p. 35, C.

“ solved please God to come heir in the spring with Lady Wigton at which time you will all come together.” So that the fact appears probably to have been, that they were straitned for money till this credit was received from Reims, which may have been one reason for not bringing the maids; and afterwards, they found they were so long of getting money, and Lady Jane was to quit Paris so soon, that it was unnecessary to send for them. The only mistake, therefore, which has been fallen into in this matter, is about the money having arrived on the *very day* of Lady Jane’s delivery.

As to this, when the circumstances of the fact are enquired into, it is extremely plain, that there could not be the least intention or view in disguising it. Lady Jane was delivered upon the 10th of July, and the credit from Reims did not arrive till the 26th, several days after the news of the delivery was known at Reims.—When Mrs. Hewit therefore mentioned this in her deposition in the service, as a reason for not sending for the maids, it would have answered her purpose much better to have told the true fact (provided she had remembered it) that the money did not arrive till the 26th July, which was within eight days of their leaving Paris, and was the very day on which she had wrote to the maids, that it was now too late to send for them.

Sir John Stewart, in emitting his declaration, has fallen into the same mistake, as to the day of the arrival of the money, probably from reading Mrs. Hewit’s deposition in the service; but the mistake is entirely innocent, as it could tend to no purpose whatever. It is in the nature of things impossible, that witnesses, in deposing to transactions of this nature, from memory alone, at the distance of so many years, can be precise as to days and dates. Sir John could have no view in accelerating the arrival of this money; and therefore the mistake must have been perfectly accidental.

As to Isobel Walker, as she was not at Paris, and could know nothing personally about the precise time of receiving this money, it is plain, that she could only take it upon the information of Mrs. Hewit, either at the time, or afterwards, in relating these transactions. At the time, it is impossible, that the arrival of the money could be given out to be upon the day of the delivery, because it appears, that the accounts of the delivery were wrote to the servant-maids and others, upon the 22d July, four days before the money arrived, and three days before the credit was sent from Reims. Isobel Walker indeed talks of letters which she received from Mrs. Hewit, about the arrival of this money, others than these produced in the service. It is not improbable, that Mrs. Hewit may have wrote to her on the 27th or 28th, after the money was received, and that Isobel Walker made answers to that and the other letters in the way she has deposed; but, it is altogether improbable, that in any of these letters it would be said, that the money was received the day of the

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delivery,

delivery, when it was known at Reims, that the delivery was on the 10th, and that Mr. Andrieux only remitted the money on the 25th. The amount therefore of the whole is, that Isobel Walker, in deposing to a fact, which she could only have at second hand from Mrs. Hewit, must have taken it from some late hear-say of Mrs. Hewit's, and that she is mistaken in supposing, that she took it from the letters wrote at the time.

3. Fact de-
posed to about
nurse's child.

The only other circumstance, from which a concert was endeavoured to be inferred between Mrs. Hewit and Isobel Walker, but in which Sir John has no concern, is a fact deposed to by the two former, in these words: Mrs. Hewit in the service depones, That they got the nurse for Archibald, the claimant, at the village near Paris, to which they went, as above mentioned, and that they carried her, together with her husband and *child*, with them, to Reims. Isobel Walker says also in the service, " That Lady Jane and Sir John re-
" turned to Reims, as the deponent thinks, betwixt the fifth and sixth
" week after they had left it, and brought the claimant alongst with
" them, with his nurse and her husband, and a *child* of theirs, and
" Mrs. Hewit."

Ser. p. 14. B.

In fact, this nurse's child was not brought to Reims, but was left behind at Dammartin, and the pursuers, full of their own idea of an imposture, and of a combination of witnesses, take hold of this very trifling mistake in the depositions of Mrs. Hewit and Isobel Walker, though it is not possible to conceive, that there could be the smallest intention or motive to commit it. They knew that this nurse had a husband and a child, and they remembered that the husband was brought along with her to Reims, and recollecting, at the distance of fourteen years, they imagined the child had likewise been brought. Isobel Walker at the same time was deposing with a letter in her hand from Mrs. Hewit, wrote from Dammartin, on the 12th August, in which, after mentioning that they had hired this nurse, and that she had a husband and a child along with her, she uses these words: " So
" we have a husband and child to bring along with us, and glad to
" do it;" from which it is plain, that it was once intended to bring the child to Reims, though afterwards they resolved to leave it at Dammartin. It will be observed too, that both Mrs. Hewit and Isobel Walker mention this circumstance only in an overly manner, viz: that a nurse was got at Dammartin, and she and her husband and child brought along with them; and it is extremely probable, that, had particular questions been put concerning this child, they would have recollected, that he was not brought to Reims.

Serv. p. 36 B.

The pursuers were pleased to figure a reason, why Mrs. Hewit and Isobel Walker should have knowingly concurred in this mistake about the nurse's child, but it was a reason of so singular a kind, that it is difficult to explain what was intended by it. They, in the first place, upon no other foundation than their own conjecture, supposed, that

Sir

Sir John and Lady Jane, had once a scheme of assuming the nurse Mangin's child, for the youngest twin; and, having laid down this position, they, in the next place, were pleased to imagine, that Mrs. Hewit and Isobel Walker, afraid to tell the true history of this child, though he died as far back as October 1748, had invented this story of his having come to Reims, in order to prevent any enquiry about him at Dammartin.

From this, and many other arguments of the same kind used by the pursuers, an observation naturally arises, which it is of consequence to have in view. In place of establishing by evidence that an imposture was committed, they seem all along, in their enquiries, in their proofs, and in their pleadings before your Lordships, to have assumed this position, without any proof, that Sir John Stewart and Lady Jane Douglas were guilty of a fraud; and every circumstance, every appearance, and every argument, must be wrested and explained in such a manner, as to coincide with their system. A fair and impartial examination of evidence is not their object; but your Lordships must, in the first place, take it for granted, that the defender is supposititious, and then every circumstance, however innocent, must be viewed in such a light, as to favour the imposture.—With regard to this nurse's child, supposing both pregnancy and birth to have been fictitious, it is absolutely impossible, that the scheme could have been to adopt him as the youngest twin. From his extract of burial, in process, it appears, that he was eight months old upon the 1st day of October 1748, so that he was born five months before the period of Lady Jane's delivery. Your Lordships have heard a great deal about the accounts uniformly given out concerning Sholto, from the time of his birth, that he was a weak puny child, and that it was hardly expected he was to live. These accounts were particularly given out during the two or three first months after the birth, at the very time that they are supposed to have had this Sholto at Dammartin, who was five months older, and, consequently, must have been much stronger than even the oldest of the twins. But, indeed, independent of this circumstance, it is injurious and improper to argue upon an intention of which there is no evidence, and which is contradicted by reason; for whatever may be done in a large and populous city, such as Paris, the enlevement of a child from the village of Dammartin could certainly not have been effected without a moral certainty of immediate detection. The child was left behind at Dammartin, in order to avoid the inconvenience of bringing a whole family with them to Reims.

But whatever may be in this, surely every view, with regard to that child, must have been at an end when he died, and was buried upon the 1st October 1748. The fact is not disputed, that he did actually die; the evidence of it is in process. A new ground, therefore, must have been taken from that time forward; and it is ridiculous to suppose,

suppose, that Mrs. Hewit or Isobel Walker, in their depositions in the service, in 1761, could have the least intention to disguise or conceal the fact with regard to him, as he lived and died the son of the nurse Mangin. The idea of preventing any enquiry or discovery concerning him, is absurd; for, in the first place, the saying that he was brought to Reims, would not have that effect, but rather the contrary. And, secondly, there was nothing to enquire or discover concerning him, except that he was put out to nurse at Dammartin, as the child of Mangin, and died in the same character.

These particulars therefore being explained, the memorialist apprehends, he has made a satisfying answer to such part of the pursuers council, as were of opinion, that Isobel Walker was a confederate in the supposed fraud; and he has also shown, that the circumstances, from which a combination among Sir John, Mrs. Hewit, and Isobel Walker, was endeavoured to be inferred, do by no means support that conclusion. Mrs. Hewit and Sir John may have had occasion to converse together about their transactions abroad, before the present action was thought of; and, in like manner, Mrs. Hewit and Isobel Walker have sometimes, no doubt, talked of these old stories, and thus an accidental concurrence may have been occasioned, in circumstances of no moment, and in which, from want of memory, they have been mistaken; but what shews clearly, that there was no intentional concurrence is, that they contradict each other in circumstances seemingly more material, such as Sir John's previous journey to Paris, and fundry others, to be afterwards noticed, which undoubtedly would have been concerted, had there been any combination or fraud in the case.

It only remains therefore to consider Isobel Walker's deposition in the other view, mentioned by a part of the pursuers council, viz. that she was in the same situation with Effy Caw, guiltless of the fraud and imposed on. In this view of the matter, one of two things must necessarily be granted, either, 1mo, That she is a good witness to every real symptom and appearance of pregnancy. Or, 2do, that she has been prevailed on to commit perjury, when called as a witness in the service, by saying, that she had access to the person of Lady Jane, and that she dressed and undressed her, saw her belly and her breasts uncovered, and felt her with live child, when, in fact, she was always kept at a distance from her.

MAIDS
NOT PER-
JURED.

As to this last supposition, it will be difficult for the pursuers to support it from the evidence. The memorialist has already shown, that there is no reason to presume it from any supposed concert or combination among the witnesses.—That Isobel Walker should have been kept at such a distance, as to be ignorant of Lady Jane's situation, is most unnatural to be supposed, and is contradicted by every circumstance of the evidence. From the depositions of Madame Gillefen, Madame Scholl and Madame Tewis, Guenet the notary, Miss Primrose,

rose, and all the other witnesses at Aix-la-Chapelle, at Reims, and upon the road, it is proved that the maids had constant access to her; that they were employed in lacing her stays, dressing her, and putting her to bed. Miss Primrose came in when one of the maids was putting on her stays; Mrs. Tewis says, the maids and she observed the first appearances of pregnancy; Madame Scholl, that the maids were with her in the room when she went to bed, and in the mornings; and Madame Gillefen says the same thing; Guenet the notary says, that the maids put her to bed at Retelle; the Reims people observed the maids employed in making the child-bed linen. It is clear then, that the maids were not kept at a distance; and how can your Lordships believe, that two women, constantly employed about Lady Jane's person, should have been deceived into a belief of a pregnancy which was not real, more especially such a pregnancy as is described by the pursuers, which was sudden, and appeared only at times?

Isobel Walker and Effy Caw (for it is impossible to separate them) undoubtedly knew Lady Jane's real situation at the time; they believed her to be really with child, and their observations were not confined to outward appearances, nor indeed is it possible that Lady Jane could have carried on a nine months simulated appearance of pregnancy, without the participation of those female attendants who were constantly about her person. Her linens must have been seen by the servant-maids, and that circumstance alone, would very soon have made a discovery to them of the fictitious appearance.

But let it be supposed for a moment, that Isobel Walker, as well as Effy Caw, were kept at such a distance from the person of Lady Jane, that no opportunity was given them of discovering the imposture, the memorialist would be glad to know, at what period of time was it that Isobel Walker was prevailed on to be guilty of the perjury of which she is now accused? And at what time was it, or by what means, that Effy Caw, who was turned off by her mistress, and left her in disgust, was induced to persuade all her acquaintance, that she had particular access to know Lady Jane's condition; that she had assisted in dressing and undressing her, and that she was sure she was with child? The evidence of Isobel Walker, in the service, was not a new invented story, to serve that particular occasion. Your Lordships do not see any evidence of bribery practised by the memorialist, or by his agents, on this witness, to make her tell a story which never had been told before. The supposition is contradicted by her general character, by the uniform tenor of her conduct, and by the accounts which her fellow-servant, Effy Caw, appears on every occasion to have given with regard to this pregnancy. As soon as Lady Jane and her family came to this country, the stories which were maliciously propagated by her enemies

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against

against her, did certainly come to the ears of the servant-maids. If the fact therefore be true, that they were kept at a distance from the person of Lady Jane, and if they were so very short-sighted themselves, as to suspect nothing of the fraud, which, for nine months together, was carrying on before their eyes, must not these reports have immediately created suspicion in their minds? and must not the reflexion on every circumstance of Lady Jane's extraordinary conduct, during that period of concealment, have confirmed them in the belief, that Lady Jane had been guilty of the fraud laid to her charge, and they themselves egregiously imposed on? Yet it is in proof, that Isobel Walker, who remained in the service of Lady Jane to her dying day, entertained the greatest respect for that Lady, was intrusted by her with the care of her children, and, in every particular, showed that she had the most thorough belief and conviction of the truth of the birth; and Effy Caw, though turned off, was no less satisfied that the reports were most injurious.

The conclusion therefore to be drawn from the whole evidence, with regard to the servant-maids, is, that they were not accomplices in any supposed fraud; that they were not kept at a distance or imposed on; that they had the best opportunities of knowing the real situation of Lady Jane; that they knew and were satisfied of her pregnancy; that they did not pay the least regard to the injurious reports which they afterwards heard to the prejudice of Lady Jane; that they were not practised on to support the story of the birth by falsehood; that Effy Caw continued to her dying-day in the firm belief of the pregnancy and birth; and that Isobel Walker is an honest witness, and has, upon her solemn oath, in the presence of Almighty God, attested facts which put the pregnancy beyond doubt, which at once destroy the whole system of the pursuers, and which do not rest upon her single testimony, but are supported by the evidence of Mrs. Hepburn, Madame Tewis, Mrs. Greig, and a variety of other persons, whose veracity cannot be in the smallest degree questioned, to say nothing of Mrs. Hewit, Sir John Stewart himself, or the constant asseverations of Effy Caw.

OBJEC-
TIONS TO
THE PREG-
NANCY A-
RISING
FROM CON-
DUCT.

But to this pregnancy it was in the next place objected, that there were certain circumstances in the conduct of Lady Jane during the progress of it, which seemed to correspond more to a simulated than a real pregnancy, viz. 1mo, Her denial of the marriage to Lady Katharine Wemyss, as far down as February. 2do, Mysteriousness of her appearance, and constantly wearing a hoop. 3tio, Making long and fatiguing journies, when so far advanced in her pregnancy. 4to, Repeated threatnings of miscarriage, at Sedan, Retelle, and Reims, yet
no

no appearance of any advice taken or assistance called. Lastly, Sitting up all night when within eight days of her delivery, and setting out in the stage-coach for Paris.

In general, the memorialist must be allowed to observe, that a greater hardship cannot be figured, than for any person, whose birth is disputed, to be obliged, at the distance of sixteen years, to trace every little circumstance in the conduct of his parents before he was born, and to account for every step taken by them. Arguments founded on conduct can have no weight, unless it were possible to bring evidence of every thing that passed in the minds of those persons whose conduct is enquired into. A thousand circumstances may have happened, and motives may have occurred, which it is in the nature of things impossible to give any account of, after the death of the parents. The pursuers have used the freedom to lay down a system of imposture, and every action of Sir John Stewart and Lady Jane Douglas must receive that construction alone which adapts it to the system. This, however, is a method of reasoning most fallacious in itself, and contrary to every known rule of law, by which the presumption is for innocence, and any circumstances of conduct which may be doubtful or equivocal, ought to be explained rather to acquit than to condemn the party accused. Indeed, if any person will take the trouble of looking back into his own past conduct, he will find, that many things have happened, and many things have been done by him, from motives neither good nor bad in themselves, but merely from accidental causes, which, at any distance of time, it is impossible to trace, or give the least account of.

With regard to the story told by Lady Katharine Wemyss, of Lady Jane's denying her marriage to her in the beginning of February 1748, and desiring her to contradict the report of it in England, which rests upon her single testimony, it appears in general that Lady Jane made a secret both of her marriage and pregnancy, as long as it was in her power so to do. And this circumstance in her conduct is extremely accountable from the reasons which have already been given. Lady Katharine Wemyss appears to have left Aix-la-Chapelle on the 10th of February. There is a letter from Lady Jane to a correspondent in this country, of date the 8th February, in which she says, "It is by Lady Katharine, who goes for England the day after to-morrow, with whom I send this letter." Lady Jane was at this time only between three and four months gone with child. She had not yet notified the marriage or pregnancy to the Duke of Douglas, or to any of her friends in this country. It was proper, before taking that step, to have some person to intercede with the Duke of Douglas. A discovery

Answer;

Denial of Marriage to L. K. Wemyss.

Purf. pr. 39, D.

very therefore by Lady Katharine Wemyss would have been premature, and for this reason it is extremely probable that Lady Jane requested of her to contradict the marriage when she went to Britain, and it is probable too, that Lady Katharine, in relating this conversation at the distance of sixteen years, has not been perfectly accurate in her recollection of particulars. She says, "Lady Jane blamed her Purf. pr. 41, B. "cousin Miss Mally Ker for having raised the story, in order to prejudice her brother the Duke of Douglas against her, and that it had "been so effectual, *that her brother had stopped her pension.*" That Lady Jane should have told so notorious a falsehood, as that the Duke had then withdrawn her pension, is impossible; and therefore it seems plain that the witness, whose memory appears, from some other parts of her oath, not to be extremely correct, has undesignedly fallen into mistakes in relating this conversation.

As to Lady Katharine's not being in the knowledge of the pregnancy, what she depones is as follows: "Being interrogated, if, when Purf. pr. 42, B. "the deponent left Aix-la-Chapelle, Lady Jane appeared to be with "child? depones, That as she did not believe that Lady Jane was "married, she took no thought of her being with child."—It may very well have happened, that Lady Jane's pregnancy, when only in the third or fourth month, was not so very remarkable, as to be apparent to these "who took no thought of her being with child."—But Lady Katharine's own letters, in process, will show, that when afterwards apprised of Lady Jane's marriage and delivery of children, she neither entertained any doubt of her being the mother of these children, nor any disregard for that Lady or Sir John Stewart.

In her letter, without date, she says:

"My dear Madam,

Def. pr. 878. "I had the honour to receive a letter from your Ladyship two posts ago. Had I been capable of any joy, it would have been upon "hearing your Ladyship was again returned to Britain. Had I not "been in so melancholy a situation, I would have indulged my pen, "and testified my satisfaction on that agreeable news. But, my dearest Lady Jane, it would be cruel in me to renew your affliction "by a recital of my own. Should I repeat my heavy load of misfortunes, I know what your friendly, good, and sympathizing temper, must feel upon this melancholy and unexpected event. But, "dear Madam, we ought to rejoice, for he is happy; far above the "reach of mortals envy or malice. He is taken away from a troublesome world; a world of deceit and vanity; where so much truth, "real worth, and honour, could not dwell. I regret myself, but not "him; for never one lost so valuable a friend and brother: But he is "gone,

“ gone, and I am left to mourn my unhappy fate. I have reason to
 “ bless God for his goodness, in supporting me so wonderfully on
 “ this melancholy occasion; for I have often thought, if God, in his
 “ providence, should see fit to inflict so heavy a punishment on me,
 “ it would certainly turn my head, and I never should be able to bear
 “ it; but God is good, and gives strength where it is needful. I can-
 “ not long insist on this subject, but begs the continuance of your La-
 “ dyship’s friendship, and that you will afford me the pleasure of a
 “ letter from you sometimes. Though I had nothing in myself to
 “ merit this favour, I know your friendship for him that is gone, will
 “ always induce you to esteem one, who had the happiness to share a
 “ great part of his love and affection. Tears prevent me from going
 “ further, so shall conclude with my affectionate compliments to Co-
 “ lonel Stewart and Mrs. Hewit.—I wonder your Ladyship did not
 “ make mention of the dear little young babies. I beg my best and
 “ kindest wishes to them.—Mr. Wemyss presents his duty to your La-
 “ dyship, and begs to be remembered to Mr. Stewart and Mrs. Hew-
 “ it.—I have been very hardly dealt with, and I feel an inclination
 “ in me to make my moan to your Ladyship; but why will I give my
 “ dearest friend pain, when silence will prevent it? I long to know
 “ if I can hope to see you in Scotland soon.”

In another letter, her Ladyship writes:

“ I was made happy the other day, at hearing a report of your Lady- July 15th,
 “ ship’s coming to Scotland to see the Duke of Douglas, as there was reason 1752.
 “ to believe it would not be disagreeable to him. I certainly don’t think, Def. pr. 880,
 “ were you in one country, his Grace could stand out long; his dear F.
 “ little nephews, who, I hear, is the delightfulest boys in the world, would
 “ plead your excuse; and how should I rejoice at that happy recon-
 “ cilement, that would probably bring your Ladyship again to your
 “ native country, and favour me with a sight of that dear friend, to
 “ whom with freedom I could bemoan my fate, and be sure of re-
 “ ceiving a feeling sympathy, for the loss of him, who, I dare say,
 “ both your Ladyship and I still mourn for!—I beg your Ladyship will
 “ present my sincere and affectionate compliments to Mr. Stewart and
 “ Mrs. Hewit. My best wishes attend the dear young gentlemen.
 “ Mr. Wemyss and Jack Lindsay begs leave to present theirs to all the
 “ family in the most obliging way. I am, &c.”

In another, she writes:

“ My dear Madam,
 “ I had the honour of your Ladyship’s letter, and am extremely Septemb. 26,
 “ glad you are safely arrived in Scotland. It was a bold undertaking 1752.
 “ coming

“ coming by sea, especially as the dear sweet young gentlemen was
 “ along with you; but I hope they have now got the better of their
 “ fatigue, and are in good health and spirits, which will be one mo-
 “ tive to enable you to surmount the disagreeable events, that often is
 “ the fate of worth and merit, in this uncertain disagreeable world.
 “ I am extremely sorry your Ladyship should give yourself so much
 “ trouble to make apologies for that trifling sum, that Jocky Lindsay’s
 “ necessity required should be paid, for not doing it sooner. Sure I
 “ am, I know Lady Jane Douglas too well, to suspect her inclinations
 “ to do justice, especially to a poor orphan. No, my dear Madam, I
 “ was sorry I was obliged to trouble you so often upon that subject,
 “ well knowing it was a disagreeable thing to you to be dun’d, and
 “ not have it in your power to pay. I was sensibly affected at the
 “ time I made the demand, as I have known the parallel case in my-
 “ self; but peoples circumstances does not always admit of their fol-
 “ lowing their inclinations. Jocky Lindsay is the bearer of this, who
 “ is happy to think he has so favourable an opportunity of paying his
 “ respects to your Ladyship. I am extremely sorry it did not suit with
 “ Mr. Stewart to come to Scotland with your Ladyship at this time,
 “ as absence to both parties are often mighty disagreeable; but I
 “ hope God, in his providence, will bring every thing about, in his
 “ good time, that can contribute to your happiness. I’m sure I long
 “ much to see your Ladyship; but my situation is so altered from
 “ what it was, when I was so happy as to see you last, that my heart
 “ would burst to behold an object, that was so much the favourite of
 “ him that is now no more. These thoughts gives me such pain, that
 “ I haste to conclude this subject, assuring your Ladyship, that Mr.
 “ Wemyss and Jocky Lindsay, received your compliments with plea-
 “ sure and joy. Mr. Wemyss begs to be remembered to your Lady-
 “ ship with all imaginable sincerity; both he and I begs your Lady-
 “ ship will send our best wishes to Mr. Stewart. Mrs. Hewit, we are
 “ glad to hear, is well, and intreats your Ladyship will be so good as
 “ remember us kindly to her. Now, Madam, I cannot conclude
 “ without sending my blessing to the sweet dear young pair. I pray
 “ God preserve them, and make them instruments of comfort and
 “ satisfaction to your Ladyship, whose happiness and prosperity none
 “ wishes more, than she who is, with the most sincere regard and e-
 “ steem, your Ladyship’s most faithful friend, &c.”

That her Ladyship’s brother, Lord Crawford, who had frequent op-
 portunities of seeing Lady Jane at Aix-la-Chapelle, in spring 1748,
 was both in the knowledge of the pregnancy, and had the most entire
 conviction of it, and most thorough regard for Lady Jane, as well as
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for Sir John Stewart, is a fact, which, from his letters, and from many passages in the proof, stands clearly established. It is remarkable too, that Lord Crawford appears to have come to England before the delivery of Lady Jane, and, when there, lived in family with his sister Lady Katharine. It is impossible to imagine, that he never would make any mention of Lady Jane, or her being with child, in presence of his sister, more especially, as he received a letter from Sir John, when in England, wrote prior to the birth, mentioning, "the happy hour to be looked for daily;" and yet Lady Katharine has entirely forgot every circumstance of this kind, and has deponed, "That the first time she heard any account of the marriage, that she gave credit to, was in August 1748, when the accounts of the birth were wrote to Lord Crawford." Parf. pr. 42, &c.

The next circumstance of the hoop, and the supposed equivocal appearance arising from her dress, turns directly against the pursuers. It is incredible, that if she had been feigning a pregnancy, she would, at the same time, have studied to conceal it. Lady Jane declined making any publick declaration of the marriage at Aix-la-Chapelle, for reasons which have been mentioned, and this circumstance alone accounts for every seeming mystery in Lady Jane's behaviour as to the pregnancy, as it cannot be supposed, that she would make a show of her being with child, to people who believed her unmarried. Besides, she was naturally of a reserved disposition, and if she rather chose to hide, than to make a display of her being with child, this was entirely agreeable both to her character and circumstances at the time. Wearing a hoop, and mysterious appearance.

It appears, however, that Lady Jane was in use, at all times, to wear a hoop, whether pregnant or not. Madam Negret depones, "That all the times which she saw Lady Jane Douglas, as well before the departure (in 1747) as after the return of the deponent to Aix-la-Chapelle (in spring 1748) this lady wore a hoop." And in another place she says, "That Lady Jane borrowed a long cloak from her, to conceal her bulk, on occasion of her going to make a visit to the French Ambassadors." Madame Mayette says, she wore a hoop at Reims after the delivery. And it is proved, that even to the day of her death, and when in the greatest distress, she dressed in the same manner as she did when in health. Def. pr. 497, D. Def pr. 388, D.

The long and difficult journeys, when so far advanced in her pregnancy, were next mentioned; and the pursuers were pleased to magnify and represent them in a very erroneous light. Lady Jane had many reasons for not inclining to reside any longer at Aix-la-Chapelle, where her marriage was not declared, and where there was such a resort of company from all parts of Europe; it was necessary, therefore, to fix Long journeys.
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on some other place of residence; and, after sundry variations in their plan, it was thought most advisable to take up their abode at Reims in France. From Aix-la-Chapelle they went to Liege, which was the first day's journey; the distance is about twenty English miles, the country plain, and the road, at that season of the year, no where bad.—At Liege they rested three days, and then proceeded in their journey, and were three days in travelling to Sedan, between sixty and seventy miles. This the pursuers described as a very rough and mountainous country; but, in fact, though it is not quite so level as between Aix-la-Chapelle and Liege, it hardly deserves the name of a mountainous country. Many of the common post-roads in this country are much more uneven than any part of the road between Sedan and Liege; and in the month of May, there could not be the smallest difficulty or inconvenience in travelling it in a coach or chaise, in the space of three days. It appears that they rested no less than nine days at Sedan, by which time Lady Jane must have been sufficiently recovered of any fatigue sustained in the three former days travelling. From Sedan to Reims, the distance is not sixty miles; they took three days in travelling it in the stage-coach, the country perfectly even and the roads good.—Guenet the notary, indeed, talks of *mountains and hollows* between Retelle and Charleville; but the fact is not so, at least according to our ideas of mountains and hollows, though, in France, the idea of a mountain is affixed to the smallest ascent or rising of the ground. They use no other word, in their language, to distinguish the highest mountains from the most trifling hillocks; and with regard to the mountains of the Ardennes, which have been so much spoke of in this cause, it is certain that, in this country, no such appellation would be given to them.

Purs. pr. 895,
F.

When they came to Reims they were at their journey's end, at least they supposed so, till, at the distance of some weeks after, when Lady Jane had time to be fully rested; and could feel no inconveniency from her former journey, they thought it necessary to go to Paris; and the pursuers will not pretend that there could be the least difficulty in making out that journey in three days, the distance being under seventy miles, and the country as flat, and the road as good as any in Europe.

The supposed threatnings of miscarriage at Sedan, Retelle, and at Reims, are misrepresented by the pursuers; all that is said is, that Lady Jane was a little fatigued and indisposed by the way, and that they were afraid she would be *delivered*. Mrs. Hewit places this indisposition at Sedan, and Isobel Walker at Retelle, a variation of no sort of moment. Neither of them talk of a miscarriage; and though Sir John,

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in one of his notes to Mrs. Napier, makes use of the word *miscarriage*, it is plain, that he alludes to the same fact, and his using that word is a mere inaccuracy of expression, as he knew that Lady Jane was then in her 8th or 9th month, and, consequently, the thing apprehended, must have been a *delivery*, and not a miscarriage. Little inaccuracies or discrepancies of this kind, in the accounts given by witnesses of the same fact, at such a distance of time, cannot be of the smallest consequence. The pursuers argue unfairly, when they, in the first place, endeavour to lay hold of every seeming concurrence among the material witnesses, and next take advantage of every trifling appearance of discrepancy. If they agree in circumstances, they are all in a combination, and are perjured:—If they differ, their evidences are not to be believed, because they contradict one another.

As to the other part of this objection, viz. that Lady Jane does not appear to have consulted with midwives, or taken any advice, this is a mere negative proposition, the truth of which cannot appear, as it is impossible, at such a distance of time, and after the death of Lady Jane, to trace every person who may have known of, or been advised with, about the pregnancy. Many of the witnesses who have been examined were discovered by mere accident, and after a great deal of labour and enquiry; and it is extremely possible, that Lady Jane may have consulted with physicians or midwives at Aix-la-Chapelle, Sedan or Reims, though no evidence of the fact appears.

The last circumstance mentioned on this head, was the sitting up all night, and setting out in a common stage-coach for Paris. Setting out in the night-time in a stage-coach.

Your Lordships will observe in what season of the year this journey was performed. It was upon the second of July, in the climate of France, where travelling in the night-time, was infinitely more agreeable than through the day. The stage-coach has a fixed time of setting out, viz. at two in the morning; it was the only conveyance they could possibly have, as it is not the custom in the provincial towns of France to have chaises or other carriages for hire. It is likewise a very easy method of travelling, as the coach is hung, and the horses go at a step the whole way. People of the best fashion in France travel in stage-coaches; and, next to the private equipages, which people of fortune keep for their own uses, they are the best and the easiest method of conveyance. Lady Jane had no other way of travelling to Paris, and it was no inconvenience to her to comply with their hours, considering the season of the year, and that, at every stage, she had time to rest for several hours. It is probable too, that she did not then know she was so near her time, as she afterwards proved to be.—Had they declined going in the publick voiture, and fallen upon some method

of getting a private conveyance for themselves, this would have been a more suspicious circumstance, and would have been equally taken hold of by the pursuers.

But indeed one general and most satisfying answer occurs to the whole of those pretended suspicious circumstances in the conduct of Lady Jane, viz. that no suspicion was entertained at the time by the persons who had occasion to observe those circumstances, and who probably were acquainted with her motives of action.—It is remarkable, that no person abroad, either at Reims or at Aix-la-Chapelle, where Lady Jane is supposed to have acted in this unaccountable manner, conceived the least idea of her conduct being extraordinary. They believed her at the time to be with child, and to this day they continue of the same opinion, and are satisfied that the appearances were real, and Lady Jane, the mother of children—They have not even, upon recollection, and being told by the pursuers, that her conduct was suspicious, and that the imposture was clearly detected, been prevailed on to enter in the smallest degree into that notion, or to express a belief that they were mistaken or imposed on—People who are made to recollect past events, at a distant period, are sometimes apt to figure circumstances which did not strike them at the time; but this is not the case with any of those who saw Lady Jane Douglas. It is in proof, that a variety of persons at Reims, viz. the family of Mr. Andrieux, Mr. Querangale, Mr. Macnamara, Lieutenant Mackenzie, &c. not only observed the pregnancy, but knew that Lady Jane was going to Paris to be delivered; and the whole town of Reims knew after she came from Paris, that she was delivered.—Had there been any suspicious circumstances in her conduct, these people ought to have been the first to remark them, and to conceive doubts as to the reality of the birth; but this was not the case, the doubts were only raised in this country by persons totally ignorant of the true fact, and the suspicious circumstances have taken their birth from the ingenuity of gentlemen, employed by the pursuers since the commencement of this cause. It is in proof, that a gentleman, who is himself a pursuer, made a very unsuccessful endeavour to convey suspicions and doubts to one of the witnesses, which the witness himself had never entertained.

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The pursuers, in the next place, had recourse to the negative testimony of certain witnesses who had seen Lady Jane when with child, and do not remember to have observed her in that situation, viz. Guenet the notary, who travelled with them from Sedan to Reims, the two daughters of Mr. Hibert, in whose house they lodged at Reims before going to Paris; Madame Sautré, a mantua-maker at Reims, and the passengers in the stage-coach from Reims to Paris.

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The negative testimony of a few witnesses who did not observe those appearances which every other person observed, or who possibly observed them at the time, though their memories have now failed them, can have no weight, either in law or in reason, against positive proof. The deposition of Guenet, the notary, comes to nothing at all. He says he does not remember to have perceived her with child; but he adds, that he did not attend to her with that view, nor did he know whether she was married or unmarried; and he further says, that she wore a long cloak, which reached down to her feet. Answer.

The depositions of the two Hiberts (Tournelle witnesses) are still less important. Louisa Hibert says she did not perceive, that the Lady who spoke French was with child; but, she adds, "That she might be with child, although the deponent did not perceive it, and although her brother said to her at the time, *Do you know, my sister, to whom you hire your apartment? do you perceive nothing, I perceive something?* To which the deponent answered, My brother, these are persons of consideration who have been directed to me by Mr. Andrieux, and, if I perceive any thing, I will go to ask him what is in it; and, besides, these are strangers, who are here to day and elsewhere to-morrow." It appears that she went very seldom into the apartment of the strangers, *perhaps only once or twice a-week*, and it would seem, that she had reasons for not inclining to make the same observations that her brother had done. The other sister, Madame PrevotEAU, says only, Purs. p. 902,
—p. 902, A.
 "That she has no remembrance of having perceived Madam Stewart with child, and cannot say if she was or was not." Both the sisters make mention of having seen the two servant-maids working at child-bed linen, a circumstance which puts it beyond dispute, that Lady Jane must then have had the appearance of pregnancy, either real or pretended, as her conduct would otherwise have been absurd and inconsistent. Indeed it is utterly incredible, supposing a fraud to have been intended, that she would have done the thing by halves, and appeared with her disguise to some persons, and without it to others, at the very time too, when Madame Andrieux, and a variety of other persons, knew that she was going to Paris, with the professed intention of being delivered. Had she laid aside the appearance but for one minute, she must have been detected by the servant-maids, who have been shown not to be accomplices. —p. 899, D.

The same observation will serve as an answer to the circumstance deposed to by Miss Sautré, the mantua-maker, (another Tournelle witness.)—The pursuers at first gave out, that Miss Sautré had taken the measure of Lady Jane's waist before she went to Paris, in order to make a gown for her, and that the same measure

measure answered to Lady Jane after her return from Paris.—No
 Purs. pr. 908. such thing however appears in evidence.—Miss Sautré does indeed say,
 that she altered a gown from the English to the French fashion for Lady
 Jane before she went to Paris, and that she did not observe that she
 was with child.—But, in the first place, supposing the fact deposed
 to by this witness to be true, the pregnancy might very naturally escape
 her observation, as she was entirely unacquainted with Lady Jane's
 former appearance, and she says she gave no attention to her shape, so
 as to observe whether she was with child or not; she adds, that Lady
 Jane was dressed in a hoop, and that the measure of a gown is not ta-
 ken by surrounding the waist, but by applying a piece of paper to the
 back.—2dly, There is great reason to believe, that the witness is en-
 tirely mistaken as to the circumstance of fitting up a gown for Lady
 Jane before she went to Paris.—Mrs. Hewit says she had no gown al-
 tered or made before that period; and from Miss Sautré's account-
 book in process it appears, that there are various articles contained in
 it, of work performed for Lady Jane after her return in August,
 but none previous. Lastly, it is incredible that Lady Jane should have
 been guilty of such folly as to have thrown off the appearance of preg-
 nancy to a mantua-maker, who was to take inspection of her shapes,
 when she was to make that very mantua-maker, and all the town of
 Reims, believe, in two or three weeks after, that she was delivered of a
 child, or children.—Indeed, the witness herself says, in substance, that,
 on Lady Jane's return to Reims with the defender, it never once
 entered into her head to suspect that Lady Jane had not been preg-
 nant, though she wondered at her own stupidity in not observing
 it.

In the next place, with regard to the people in the stage-coach, the
 pursuers endeavour to prove, from their depositions, 1mo, That Lady
 Jane appeared to be in good health during the journey. 2do, That
 none of them observed her to be with child. The first of these circum-
 stances makes against the pursuers, as it is from thence plain that she
 arrived safely at Paris, without any accident to occasion the disappear-
 ance of those symptoms which she carried with her from Reims: at the
 same time it appears, from the deposition of Mademoiselle Vatry, that
 one of the stranger ladies complained sometimes, and was uneasy during
 the journey. She indeed says, that it was the lady who spoke no French
 that was indisposed; but Madam Audry, who describes also a lady
 who spoke no French, and clearly means Mrs. Hewit, is equally posi-
 tive that the said lady was in perfect good health during the jour-
 ney. Neither does the other *negative* circumstance in the smallest de-
 gree aid the pursuers. The *non memini* of these witnesses, who knew
 nothing about Lady Jane, and never saw or heard of her before or af-
 ter that period, cannot have any weight against the positive proof that
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she had every appearance of being with child, when she left Reims. And indeed this observation is of itself a sufficient answer to all the negative evidence of witnesses not observing her with child. Those who knew Lady Jane, who were acquainted with her former appearance, or who were much in her company, or gave any sort of attention to her shapes, were satisfied of her pregnancy; but some few persons, totally unacquainted with Lady Jane, ignorant whether she was married or unmarried, and who saw her only transiently, and when dressed in a hoop or a long cloak, have no distinct idea or remembrance concerning her, and cannot say whether she was with child or not with child.—To set up this as a contradiction to the positive proofs by unexceptionable witnesses, is a most vain and ridiculous attempt.

The stage-coach contained six persons, besides Sir John, Lady Jane and Mrs. Hewit, viz. Madame Audry, Monf. Audry curé de Remilly, Mademoiselle Vatry, another of Madame Audry's family, a servant-girl called Fevre, and one Mr. Colmart. Of these only the three women have been examined as witnesses. Mr. Colmart could not be found, and Monf. Audry, having declared that he remembered nothing earthly about the matter, was not adduced by either party.

Mademoiselle Vatry, and the girl Fevre, seem to have a remembrance of Lady Jane, but their depositions are nothing to the purpose. Mademoiselle Vatry says, "the lady wore a long cloak, and that she gave no sort of attention to her shapes, so as to discover whether she was with child or not, and that the lady might have been with child, though she did not perceive it;"—she adds, "that some time after, the lady in the middle asked her if she would remain any time at Paris; that she answered, that she reckoned to remain there two or three months; and the said lady said to her that she reckoned to remain there near the same time; and that she engaged the deponent to come to see her on her return to Reims, at the house of Mr. Hibert, street of the Bourg St. Denis, where she told the deponent she lodged. Depones, that during all the journey, she, the deponent, eat with the other persons of the machine, excepting with the gentleman and the two ladies, who always eat separately." It is extremely improbable that Lady Jane would have made this request, had her appearance been such as the pursuers would endeavour to make it. Purs. pr. 913;
F.

Fevre depones, "That she paid no attention to the circumstance of Lady Jane's being with child or not.—That there was no question about being with child, *at least she does not remember it.*" But she adds a circumstance, not extremely consistent with the fraud which Lady Jane is then supposed to have had in view.—Depones, "That the Purs. pr. 917;
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" same

“ same lady asked at Mademoiselle Vatry what the deponent was going to do at Paris ; to which Mademoiselle Vatry answered, that the deponent would alight with her at the house of the Abbé Vatry, her brother, and would remain there till she would find a house to serve in. Depones, that the said lady, upon this, said to the deponent, Will ye come with me? which she said smiling ; and that she, the deponent, does not know if it was seriously or in joke ; but that the lady appeared to have taken a liking to her, *paroissoit avoir des bontés pour elle*. Depones, that she believes, without being certain of it, that Mademoiselle Vatry said, that having had her young in her service, she would not let her go in that manner.”

In the next place comes Madame Audry, a witness once much boasted of by the pursuers, but who was in a manner given up by them in the pleading. The condescendance relating to her is in these words :

“ Madame Audry, herself the mother of twenty children, sat next to Lady Jane during the whole journey, and did not perceive any appearance of her being with child.” The pursuers are now obliged to apologize for her evidence, by saying, that she sat in the most distant part of the coach from Lady Jane. It is plain, that she does not remember any such woman as Lady Jane Douglas in the whole company. She says, there was only one stranger lady, and from the description given by her, it appears, that Mrs. Hewit, and not Lady Jane, is the lady whom she has had in view. She depones, “ That the foreign gentleman told her, that the foreign lady did not understand French ; she adds, that this woman did not speak a word of French, and that the gentleman was obliged to explain to her in a foreign tongue, what the deponent said of her or to her. He said further, that it was the first time that this foreign woman came to Paris, or into France, she does not remember which of the two, but that he had travelled a great deal. Having been interrogated on the part of the defender, she says, that the foreign lady was of a fine shape, neither fat nor lean. She depones, that this foreign lady, having seen in the neighbourhood of Paris, a great number of coaches and equipages, looked at them with much astonishment, as the foreign gentleman said to the deponent. She says, that it was upon this occasion, she asked the foreign gentleman, if it was the first time that this foreign lady had made a journey to France or Paris. She said to them likewise, that it was the King’s equipages which they had seen. She says also, that she does not remember, how this foreign lady was dressed ; but, so far as she can remember, this foreign lady had a scarlet travelling cloke, and that her hair was dressed in the English fashion ; and the deponent does not remember to have seen any other woman in the said machine ; and does not remember, if it was men

“ or

Purf. p. 919,
E.

" or women who made up the rest of the machine, which contained
 " at that time, when it was full, eight persons."

Your Lordships will judge, how far this evidence of the people in the stage-coach can avail the pursuers. The supposition is indeed incredible in itself, that Lady Jane, when she had all the appearance of pregnancy at Reims, and set out in company with six people from that city, with a declared intention of lying-in at Paris, and of returning to Reims, with a child or children, should at once have thrown off her disguise, and shown herself to those people not to have been with child.

The pregnancy therefore of Lady Jane Douglas appears to be as fully established, as it is possible for any fact of this kind to be, upon the authority of witnesses. It is proved, by direct and positive testimony, and the memorialist apprehends, that he has fully removed every objection, which the ingenuity of the council could suggest to them upon this head of the proof. It is very true, that there was no judicial form of *ventris inspectio*, by midwives or physicians, to certify the fact; but it is believed, no person will imagine, that such a form was necessary, or could ever enter into the heads of Sir John Stewart or Lady Jane Douglas. It is sufficient to say, that every usual appearance and symptom of pregnancy, so far as they can be judged of, by real largeness of belly, swelling of breasts, length of features, and other circumstances above described, are established by direct and pointed evidence. If the pursuers say, that this was not a real pregnancy, or that it was not followed by a real birth, it will be incumbent on them to show, in what manner it ended, or how it went off. The hypothesis, which they seemed chiefly to rely on was, that Lady Jane never in fact had any of those symptoms or appearances, but that the whole were artificial, and that the size of her belly was occasioned by some external covering used by her, to create that appearance. But, if the defender has been successful in proving, that she had the real appearances, this *original* hypothesis must necessarily fall to the ground; and indeed the pursuers were so sensible of the weight of the proof against them upon this head, that, in the pleading, they were obliged to betake themselves to two other suppositions, contradictory to the former, and inconsistent with each other.

imo, They supposed, that at Sedan, at Reims, or at Paris, Lady Jane may have miscarried, or may have been delivered of a dead child. They said they had not the custody of her during the pregnancy, and that accidents may have happened, which they cannot now trace: that she was nine days secreted at Sedan: that she lived in a private manner at Reims; and that, during five days of her abode in Paris, (a circumstance which will be more fully explained in the sequel) they

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can give no account where she resided, or what happened to her. 2do, They maintained, that all the symptoms of pregnancy were fallacious, and that Lady Jane's large belly might have been occasioned, not by real pregnancy, but by deceptive causes, such as a dropfy, &c.

Your Lordships will observe, that both of these plans are so far detrimental to the pursuers, that, whether they adopt the one or the other of them, a very considerable part of their proof is rendered absolutely useless; for, if Lady Jane miscarried, or bore a dead child, after having been really pregnant; or, if she set out from Reims for Paris, with all the real symptoms of being with child, and these only proved to be deceptive at some after-period, the scheme of imposing on the world must have been conceived only from the time of her miscarriage or delivery, or from the time of the largeness of belly, or other symptoms, evanishing.

Now, in the first place, with regard to the nine days stay at Sedan, if there was a miscarriage or a delivery at that place, it is extremely singular, that the pursuers, after all their indefatigable pains in collecting this proof, should not have been able to bring the least vestige of evidence of an incident so remarkable, and which, in the little town of Sedan, must have been so well known, as to have been easily discovered. Your Lordships will observe, too, that the pursuers are here arguing in contradiction to themselves; for they seem to think it extraordinary, that Lady Jane should have been removed from one house to another in Paris, upon the ninth or tenth day after the delivery, and yet they suppose her to have been delivered or miscarried at Sedan, upon one or other of the nine days, during which she rested at that place, and that she recovered so well in that short space of time, as to proceed on her journey, and travel sixty miles in three days in the stage-coach.

If she was really with child, and was delivered at Sedan, what becomes of that equivocal appearance, and mysteriousness of conduct, which the pursuers so much insist on, at Aix-la-Chapelle, and by the road? If she was delivered at Sedan, this could not be without the knowledge both of Isobel Walker and Effy Caw, and, in all the future operations, they must necessarily be supposed to have been accomplices; yet they were left behind at Reims, and the memorialist has shown, that they were privy to no fraud.

In Reims, the possibility of a miscarriage or delivery is excluded by the whole of the evidence. She was constantly seen by Abbé Hibert, and by various other persons, and it is clear that she had no indisposition which confined her one single day, before setting out in the stage-coach for Paris. The pursuers themselves have been at pains to establish,

establiſh, that ſhe arrived there without any accident. The delivery, therefore, muſt have been at Paris, and there, indeed, the defender admits it to have happened, but not during the five days, nor in the way and manner which the purſuers, without any evidence, ſeem to point at. The ſuppoſition made by them, on this head, is abſurd, and requires no argument to refute it. They ſay, they have traced her footſteps, during the whole time of her ſtay at Paris, five days only excepted; that ſhe was in perfect good health before the commencement of theſe five days, and in equal good health at the end of them, yet they ſay, ſhe may have miſcarried, or have been delivered on one or other of theſe five days, and, at the ſame time, they uſe thoſe very appearances of good health, before and after the delivery, as an argument againſt the exiſtence of it. Theſe things are ſo contradictory, that to make ſenſe of them is difficult.

It remains, therefore, only to conſider the laſt hypotheſis formed by them, viz. that Lady Jane's large belly, and other ſymptoms which uſually attend pregnancy, may have been the effect of other cauſes, and may have gone off all at once, after her arrival at Paris, without any indiſpoſition; and, upon this head, they appealed to the caſes of the Dutcheſs of Parma, and of Mary Queen of England, and to two learned authorities, viz. Zacchiæ quæſtiones medico-legales, and Dr. Porterfield's depoſition.

That women have ſometimes been deceived with falſe appearances of pregnancy, the defender has no occaſion to diſpute; but as theſe phænomena are ſingular, and may only, perhaps, occur in one of ten thouſand inſtances, ſo, when a married woman has had a large belly, and all the other ſymptoms of pregnancy, during the uſual time, and produces a child or children, as her iſſue, it is at leaſt ten thouſand times more probable that ſhe is the real mother, than that ſhe was deceived in her expectations, and afterwards procured ſuppoſitious children, to make up for the diſappointment. It does not appear that Zacchiæ had any practice in midwifery; and as to the other learned phyſician, who has indeed carried his ſcepticiſm, in matters of pregnancy, to a very great length, he has, at the ſame time, ſaid, that he is no accoucheur, and is ſeldom conſulted in midwifery, which may poſſibly account for his differing in opinion from Mauriceau, and other writers on the ſubject, and from Dr. Young, who is a practical accoucheur.

The uſual ſymptoms of pregnancy are well known, and need not here be deſcribed.—If a married woman has theſe appearances, every knowing perſon will declare her to be with child, and the difference, in point of age, between one woman and another, does not make the leaſt variation as to ſymptoms. Dr. Young depones, That he ne-
Purſ. pr. 490.
B.

ver did hesitate to declare a woman pregnant, who had the appearances described by him. And he further says, " That he never was once deceived, when he felt the motion of a child in the three last months of pregnancy." It is true there are instances of false symptoms, but none of these (water excepted) occasion any considerable bigness of belly. None of them occasion any alteration of features, or swelling of the breasts. The colour is bad from the woman's bad state of health, but the features continue the same. A dropfy, indeed, is always attended with largeness of belly, but it is easily discernable from pregnancy. There are no perceptible motions, the breasts are always flat, and the consequences of it are generally more troublesome than those of pregnancy. The only symptom which Queen Mary appears to have had was a large belly, which ended in a confirmed dropfy, but did not go off precisely at the end of nine months, as Lady Jane Douglas's pregnancy is proved to have done. The Dutchess of Parma is indeed said to have been visited by midwives and surgeons; but it is extremely probable, that the politicks of Europe, and the private influence of the Dutchess, had a considerable effect upon their report.

Mauriceau,
p. 177.

Comparing these observations with the proof, your Lordships will judge whether you have not sufficient evidence, that the symptoms attending Lady Jane Douglas were the true and genuine marks of real pregnancy, and not owing to any deceptive cause.

At the same time, the memorialist must be allowed to complain, that he is obliged to chace and refute every contradictory hypothesis which the pursuers may think it necessary for them to adopt, in order to give a colour of *possibility* to their idea of an imposture.—An observation made by them in the pleading was, that, in other cases of *partus suppositio*, some evidence had always appeared of an outward affectation of pregnancy, because, without it, the imposture could not well be carried on. The memorialist denies, that in any of the cases referred to by the pursuers, was there such a proof of the *real* appearances, as in this case has been recovered, though at the distance of sixteen years, and after the deaths of material witnesses. The external appearance of a large belly, covered with cloaths, was all that, in these cases, was proved, and, in some of them, the artificial cause of that largeness of belly was detected. But, in answer to the pursuers observation, the memorialist begs leave to make another.

In every case of *partus suppositio*, which in any country has been tried, we find one uniform plan laid down, and either the imposture traced by clear evidence, or the action dismissed. But the pursuers, in the present case, have indulged themselves in such a variety of system, and such duplicity of argument, as never before was known in the trial of *partus suppositio*, or of any other question.

In place of proving to your Lordships, that an imposture was committed, and of tracing it by evidence, they begin with taking the imposture for granted, and they think it is enough for them to show a *possibility* of its happening in one of three ways, either, 1mo, That the large belly, and other symptoms of pregnancy, were artificial and assumed from the beginning; or, 2do, That they were real, but that Lady Jane miscarried, or bore a dead child, in order to supply the place of which, she all at once took up the fancy of purchasing other two; or, 3tio, That the symptoms proceeded from inward deceptive causes, and went off without any indisposition; and that, to comfort her in so great a disappointment, Sir John picked up children for her in the streets of Paris. It is certain, that two of these three suppositions must be erroneous, because they are all contradictory to, and inconsistent with, each other, and yet they are all equally insisted in. The defender is entitled to demand a categorical and positive explanation, which of the three the pursuers are finally to adopt; for, if they are to adhere to the original hypothesis, of an assumed appearance from the beginning, it will be sufficient for the defender, in order to overthrow that system, to show from the proof, that the symptoms were real, and that there was no disguise or covering. If, on the other hand, the pursuers are to put their cause on this footing, that Lady Jane had real appearances, but that they went off in another shape, than by the delivery of twins, there will be no occasion to enter into any argument about supposed mysteriousness of conduct, length of journey, dropping servants, and a variety of other circumstances, upon which the fabrick of a simulated pregnancy is endeavoured to be reared. In this last view, the scheme of an imposture could only take its rise from the moment of Lady Jane's disappointment, and every prior circumstance in the proof must, of course, go for nothing.

It is a singular, and very hard case, that the memorialist should be brought to trial before your Lordships, for his state and birth-right, upon three different contradictory grounds, two of which must be false, and yet all the three equally insisted in. Nay, what is still more surprising, the council for the pursuers, supposing they were to be restricted to one of these plans, are not agreed as to the nature and tendency of their own evidence. In the pleading, at least, they were not agreed; but, as the memorial will probably be the work of one council, it is to be hoped that a final explanation will be there given, whether the servant-maids are from henceforward to be considered as accomplices or not accomplices.

The

The memorialist shall trouble your Lordships no further on the pregnancy, which he does, with submission, say, he has established on clear and solid proofs, unrefuted and uncontradicted.

DELIVERY. He proceeds next to the evidence of the *delivery*, a consequence unavoidable of pregnancy to the usual time. In the nature of things, however, the direct proof of a woman's being delivered, must be more limited, and, consequently, more difficult to come at, than the evidence of nine months continued symptoms of pregnancy. The one is progressive, and falls under the observation of such a number of persons, that the evidence of it will seldom be lost, if required within any reasonable distance of time.—The other consists in one single operation of nature, performed in a short space of time, and, generally, in the presence only of one or two persons, whose assistance is called for on that occasion. If these persons happen to be dead, or not to be found, or if no assistance at all was used, which is sometimes the case, it becomes simply impossible to have direct proof of the birth.

It will be remembered, that the defender's birth happened in a foreign country, among strangers, and at the distance of seventeen years from the time of leading the proof.—To make his state depend on the producing witnesses unknown, or tracing and investigating every circumstance concerning them, would be highly unreasonable, and what no court can demand. A *possibility* of their existence is sufficient; and, supposing there were no direct proof whatever, of the time, place, and other circumstances of the delivery, the memorialist would run no risk in the present action.—He has shown that Lady Jane Douglas was with child when she came to Paris. The pursuers have not shown that she miscarried, or had any other delivery, than that which gave birth to the defender.—It is on all hands admitted, that he was produced as her child, uniformly acknowledged and treated, and in possession of his filiation, as such.—The true state of the question, therefore, is, whether have the pursuers proved, by clear and undeniable evidence, that all this is a fiction? and, whether have they been able to demonstrate, that he is the son of another person, and not of Lady Jane Douglas?

At the same time, your Lordships have direct evidence, even of the *actual delivery*, and circumstances attending it. You have the uniform attestations of Sir John Stewart and Lady Jane Douglas, the letters wrote at the time, and the deposition of a third party, still in life, who was present at the birth, and received the children into her lap, and all this corroborated by a most remarkable chain of collateral incidents, to be hereafter pointed out. But, before stating the

the particulars of the proof on this head, the defender must make one or two general remarks.

The pursuers have all along affected to consider Mrs. Hewit's evidence as of no weight in support of the birth; because, if there was any imposture, she must have been concerned in it. But it has already been observed, that this is a method of reasoning, unjust in itself, and contrary to the rules of evidence. By the same method of arguing, though twenty witnesses had sworn that they were present at the birth, their testimonies would have signified nothing, because the supposed fraud must have been carried on with the connivance and assistance of these twenty persons. But it is plainly begging the question to suppose, that a person who disproves a crime, is guilty of it; and there is no doubt, that Mrs. Hewit's evidence must militate in favour of the defender, just as much as the evidence of any other witness, unless in so far as it is otherwise redargued.

Another observation material to have in view, is, that, as the anxiety of the pursuers has led them to examine and re-examine Mrs. Hewit, as well as Sir John Stewart, upon an almost infinite variety of minute facts and particulars, which human memory is not capable of retaining, so the mistakes committed by them, in their account of accessory circumstances, can never tend to invalidate their testimony as to the principal fact.—The rule is, "*Testium repugnantia inspicitur in facto principali, non in accessorio;*" and this must hold more especially, where facts are deposed to which happened at any distant period of time. The images of things decay in the memory, and some occurrences leave but a slight, others a very erroneous impression on the mind. It is even a *suspicious* circumstance, when witnesses, from their memory, give a distinct account of minute facts, which happened at a distance of time.

The pursuers have also, in the course of this cause, been at a great deal of pains to set up *negative* evidence in opposition to positive. This makes it necessary to put your Lordships in mind, that one of the most essential rules of evidence is, in no case to pay any regard to the negative testimony of witnesses, against positive proof, unless where facts are deposed to, which are totally opposite to, and inconsistent with, the affirmative proof. The reason of this is extremely plain; because, when a witness only swears, that he does not know; or has not observed the fact deposed to by other witnesses, this does by no means contradict their positive affirmation of the fact; or, if it only appears, that a person or circumstance cannot now be traced, this will not counterbalance the direct assertion of witnesses, that such a fact was true, or that such a person once existed.—These general maxims

are founded in reason, and are laid down by the lawyers of all countries.

To proceed therefore to the cause, it is a fact which both parties are agreed in, that the first house, in which Lady Jane Douglas and her company put up for some days at Paris, was the hotel de Chalons, rue St. Martin, kept by Godfroi, a person connected with the inhabitants of Reims, and to whose house the Reims people were in use to resort. It is also certain, that they did not continue here during the whole time of their residence in Paris, but lodged in other two houses at different times; and the pursuers do not pretend to say, that, while they were in Godfroi's, Lady Jane had any indisposition or complaint; from which it is plain, that, as she continued in good health, both on the journey and at Godfroi's, it must have been subsequent to her leaving the hotel de Chalons, that she got quit of her large belly, and other appearances, which she carried with her from Reims.

The account which has always been given of this matter by Sir John, Lady Jane, and Mrs. Hewit, is in substance, that, after staying a few days in the inn where they first lodged, which was not a fit place for a woman in child-bed, they went to a more private house in the Fauxbourg St. Germain, where Lady Jane was delivered on the 10th July of male-twins, the youngest of whom, being weak, was ondoyed or sprinkled by the man-midwife, present the landlady and her daughter, a widow-woman who lodged in the same house, and Pierre la Marre the accoucheur.

Lady Jane's
account of
birth.

Ser. p. 25, C.

Serv. p. 45,

E.

Def. pr. 413.

E.

Mr. Loch, when examined in the service, deponed, "That, when Lady Jane came to Scotland in the year 1752, he took occasion to ask her Ladyship, When she was delivered of the children? Where? and, Who were witnesses to the birth?" her Ladyship told the deponent, "That she was delivered in the house of Madame la Brun, * Sanbourg St. Germain, Paris, the 10th of July 1748; that Mr. Pierre la Marre, a man-midwife, assisted her at the birth; Madame la Brun and her daughter were present, a widow lady who lodged in her house, and Mrs. Hewit." It likewise appears, that Mr. Loch made a note of these particulars, on the back of a scroll which he had wrote of a testament, to be executed by Lady Jane, and which is produced in process.

The private memorandum-book of Lady Jane Douglas (a book never intended for publick inspection, but which is now also in process) contains an article or jotting in these words: "Archibald and Sholto were born on the 10th July 1748. Archibald was weaned on the 22d April 1749."

Furs. pr. 427,
B.

The

* A mistake for Fauxbourg.

The same book contains an article in these words : " Mr. Stewart ^{Purf. pr. 392, D.} wrote to Mr. Waters the 11th September, and to Monsieur La Marre " the same day." Both of these articles are in the hand-writing of Lady Jane Douglas. The last, concerning Mr. Waters and Mr. La Marre, appears, from those preceeding and subsequent, to have been wrote on the 11th September 1749, and John Waters, the brother of the deceased George Waters banker in Paris, with whom Lady Jane and Sir John corresponded, having been called as a witness, it appears ^{Purf. pr. 384.} from his deposition, that the letters from Sir John and Lady Jane have fallen by, and are not to be found ; but copies of those wrote in return by Mr. Waters, are produced from his copy-book of letters, and one of those directed to Lady Jane Douglas-Stewart at Reims, bearing Date ^{549, C.} 13th September 1749, begins in this manner : " I received yours of " the 11th, &c."—This, compared with the pocket-book, makes it plain, that Mr. Waters was wrote to of the 11th by Sir John in Lady Jane's name, and upon her business, which appears to have been the reason why Mr. Waters's answer, containing, at the same time, an account of the Duke's having stopped the pension, was directed to Lady Jane herself.

Lady Wigton depones, " That having come to Reims about Septem- ^{Serv. p. 27, F.} ber or October 1748, she found Lady Jane, Sir John, and their attendants, above named, there, and also Lady Jane's son, the claimant, as she believes, whom Lady Jane presented to the deponent, as her son, and told the deponent that she had left the other son at Paris *with the surgeon*, who attended at her delivery there, on account of the said child's being weakly and tender : that the deponent believes she *may have heard*, but does not remember the *name* of the said surgeon. Depones, that the deponent returned to England about — p. 28, D. the year 1751, as she thinks, and frequently saw Lady Jane and Sir John at London, and saw the two children, Archibald and Sholto, whom Lady Jane presented to the deponent as her sons, and treated them in an affectionate way as such ; that the deponent was told that Sholto had been only christened by the midwife ; and upon hearing it, she signified her surprise to Lady Jane that he had not been regularly baptised ; and was told it was owing to his weak state he had only been so christened by the midwife : that after the deponent had talked of that subject to Lady Jane, she, Lady Jane, came one day to the deponent's house at Hampstead, and brought along with her the said child, Mrs. Hewit, and a clergyman, who the deponent believed was a Scotchman, and there the said child was baptised by him, and named Sholto, the deponent standing god-mother

“ ther to him. Depones, that the said Sholto was extremely like Lady Jane; and that the deponent was acquainted with Lady Jane several years before that she saw her abroad.”

Purf. pr. 343,
G.

Mrs. Greig depones, “ That when she was at Reims, she heard that Sholto, Lady Jane’s youngest son, was so tender upon the delivery, that he was immediately baptised upon his coming into the world; for that she was informed the French midwives have liberty from the priests to baptise children in such a case. And depones, that she did not enquire whether the midwife was a man-midwife or a woman. And depones that she heard that the said child was sent to the country, in the neighbourhood of Paris, for his health, and was under the care of the surgeon who had attended on Lady Jane at her delivery; and that the said surgeon gave accounts to Colonel Stewart from time to time of the state of the child’s health.”

Def. pr. 358,
F.

Miss Primrose depones, “ That during the time the deponent was at Reims, she heard from *Lady Jane*, Lady Wigton, and others, that the other child, who was named Sholto, was left at nurse, at some place near Paris, on account of his weakness, and that he was committed to the care of the man-midwife who had delivered Lady Jane.”—She also concurs as to the rebaptism of Sholto in the 1751, and depones, “ That the reason which Lady Jane assigned for having Sholto baptised at that time was, that he had only before received the baptism of the man-midwife, on account of his weak state when born.”

— 360,
D.

Thus it appears, that the circumstances of the birth, as related by Lady Jane, were, that she was delivered on the 10th July 1748, of twins, in the house of a Madame La Brun, and by the assistance of a Pierre La Marr, present the said Madame La Brun and her daughter, and a widow lady who lodged in the house, and that Sholto was employed and given out to nurse in the neighbourhood of Paris, under the inspection of La Marre.

Objection ist
to Lady Jane’s
account.

One of the council for the pursuers, in the pleading, admitted, that this was the account given by Lady Jane, and particularly that she had given it in conversation with Mr. Loch, which indeed Mr. Loch himself has expressly deposed. The same thing was admitted in the table of contents prefixed to the proof. But the council who spoke last for the pursuers took up a very singular imagination, and insisted, that there was no evidence of Lady Jane’s having ever mentioned such particulars of the birth, for that Mr. Loch, in deposing to this conversation with Lady Jane, was misled into the notion, that she had mentioned La Brun, La Marre, &c. from observing the note of these particulars wrote by himself on the scroll of the testament; and that this

note

note of particulars appears from the stile and spelling of it, to have been taken from a note given him by Sir John Stewart, and afterwards produced by him as a witness in this cause.

To this a variety of answers occur. In the first place, it is absolutely incredible in itself, supposing a fraud to have been committed, that the particulars of the house, day of the birth, man-midwife, &c. should not have been concerted, long prior to Lady Jane's death. The day of the birth was mentioned in their letters from the beginning, and your Lordships have the name of La Marre in Lady Jane's pocket-book, wrote with her own hand; a variety of witnesses have also deposed, that at Reims, the person who delivered Lady Jane, and who had the care of Sholto, was named by Lady Jane and Sir John; tho', when examined at the distance of sixteen years, they do not remember the name. It cannot therefore be supposed, that she was ignorant of the only other particular, viz. the house where she was delivered.

Secondly, Mr. Loch has positively affirmed upon oath, in the service, that he had the particulars mentioned by him, from Lady Jane's own mouth; and this oath stands uncontradicted by his after-deposition in the cause. He indeed says, in his after-deposition, that he does not remember from whence he took the note on the back of the testament, " though he inclines to think it may have been wrote from " what Lady Jane had talked to him, or those about her, upon the " subject;" and he says he does not remember how, or at what time, he came by the other note produced by him, in Sir John Stewart's hand-writing; but still his oath in the service stands uncontradicted, in which he says, " he took occasion to ask Lady Jane, when she was " delivered? where? and, who were witnesses to the birth?" upon which she mentioned the particulars above set forth, of La Brun, La Marre, &c. It is therefore of no consequence, from whence he took the note on the back of the testament; it is still true, that Lady Jane, in conversation, told him the particulars of the birth, at his own express desire; unless your Lordships can believe Mr. Loch to have been guilty of perjury, which the pursuers themselves do not pretend.

Thirdly, When the two notes are compared, there appears to be no foundation for saying, that the one was taken or copied from the other. The note on the scroll of the testament is in these words: " Archbald and Sholto Stewarts were born, 10 July 1748, in Madame " La Brune's house, Sanbourg St. Germain, Paris. Present Mr. Peeter " La Marr man midwife—Madame La Brune her daughter. A widow " Lady who lodged in the house, and Mrs. Hellen Hewat."—The note of Sir John's hand-writing, afterwards produced by Mr. Loch, is as follows:

" the man meadwife's name who brought
 " Lady Jean to bed was Mr. Peeter la Marr
 " in Madame la Brun's house
 " Faubourg St. Germain Paris
 " Madame la Brune her daughter and
 " Mrs. Helen Huette present
 " with a widow Lady who lodged in the
 " same house, to whom wee wer much
 " obliged. Madame la Fever."

Your Lordships will observe, that the single circumstance, from which a similarity between these notes is endeavoured to be inferred, is, that the word *Peeter* in both, is spelled with two *ee*'s before the *t*. This is one of the very slender circumstances, upon which the reasoning of the pursuers, in so great a cause, has all along proceeded. Mr. Loch and Sir John Stewart, in writing the same word at different times, have fallen into a similar mistake in spelling, and the pursuers immediately catch at this as a clear and certain proof, that Mr. Loch's writing was taken from Sir John's, though the two writings differ in a variety of particulars, which cannot be accounted for, if the one was a transcript, or even the substance of the other. In the first place, though most of the names contained in the one, are to be found in the other, (which must necessarily have been the case, as they related to the same fact) yet they are not placed in the same order, which shows, that Mr. Loch's note was not copied from the other, and, if not copied, the mis-spelling must have been accidental. 2dly, The day and year of the birth appear in Mr. Loch's note, and not in Sir John Stewart's. 3dly, The words *midwife*, *Fauxbourg*, *Hewit*, and several others, are differently spelt in the one note and in the other. The word *Sanbourg*, in Mr. Loch's note, could not be taken from *Faubourg*, in Sir John's, the letters *F*, *a*, *u*, being quite distinct in Sir John's. And, lastly, there is a material particular in Sir John's note, which does not at all appear in the writing by Mr. Loch, viz. the name of *Madame la Fever*, by whom Sir John seems to have had in view the defender's nurse, *La Favre*. Had Mr. Loch copied, or taken the substance of his note from Sir John's, it is impossible he would have omitted so material a circumstance.

The fact with regard to Sir John's note, appears to have been shortly this; that in the year 1759, when the Duke and Dutches of Douglas lived in the Abbey of Holy-rood-house, Sir John having been desired to send a note of the particulars of the birth to the Duke and Dutches, made out the above note, and put it into Mr. Loch's hands, though Mr. Loch does not now recollect the precise time of getting it; but, had he been asked that question in the service, in the year 1761, it is probable

probable he would have remembered, that he had only got Sir John's note two years before; whereas, his own note had been wrote at a much earlier period.

Another exception was taken to Lady Jane's account of the birth, Objection 2d. founded on the deposition of the Honourable Mrs. Primrose, who, at second hand, recounts a conversation between the deceased Lady Stair Purf. pr. 69, and Lady Jane Douglas, in which Lady Jane is supposed to have C. said, that she was only *half an hour, or an hour and a half*, in Paris, before she was delivered.

It is obvious, what absurd consequences would follow, were such Answer. evidence to be listened to in any case. This conversation is said to have happened when Lady Jane was in this country with the children, i. e. in 1752. Lady Stair was dull of hearing for many years before she died. The particulars of the conversation are afterwards related by Lady Stair to Mrs. Primrose, and she again, upon memory, deposes to them in the year 1764; so that it comes to a hear-say of a hear-say of a female conversation, which is not always very accurately rehearsed. It is indeed incredible in itself, that Lady Jane, who knew that her arrival at Paris was on the 4th; that she had been there six days before the delivery, and that letters had been wrote to different people in that interval, should have been guilty of such absurdity as to say, that she was only half an hour in Paris before being brought-to-bed, and so to tell a different story to different people.

Sir John Stewart, in relating the particulars of the birth, appears to have given the same account with Lady Jane.—The declaration before your Lordships, so far as relates to the delivery, is in these words: Sir John's account of the birth.
p. 2, E.

“ Declares, That he thinks he arrived at Paris about the end of the
 “ month of June or beginning of July, and the first night or two
 “ lodged at the house of the said Godfroi; and then, on account of
 “ its inconveniency, left it, and went to the house of Madame La Brun,
 “ Fauxbourg St. Germain; but the name of the particular street the
 “ declarant does not recollect: Declares, That, besides the two places
 “ already mentioned, the declarant and Lady Jane went to the house
 “ of Madame Michel, Fauxbourg St. Germain, an hotel for lodging,
 “ though the declarant cannot recollect the particular street; and that
 “ they left Madame La Brun's on account of its being pestered with
 “ bugs, after having staid there ten or twelve days; and that their
 “ whole stay at Paris, at this time, was about twenty or two and twen-
 “ ty days; and then, for the sake of fresh air, the weather being sul-
 “ try, they went to Dammartin, where Lady Jane recovered so well in
 “ twelve or fourteen days, that they proceeded to Reims: Declares,
 “ That Lady Jane was brought-to-bed in the house of the said Ma-
 “ dame La Brun. And being further interrogate by the Pursuers
 “ council, How long time after coming to Madame La Brun's Lady
 “ Jane

- “ Jane was brought-to-bed? declares, That he cannot possibly recollect the number of days, but it was very soon after his coming to that house; and particularly remembers, that having applied to a banker, whose name he cannot remember, to advance part of money which would be due a short time after, and which being refused, the declarant wrote to Mr. Andrieux, his landlord at Reims, to send him a credit for 30 louis d’ors, or thereby, which he accordingly did, and Lady Jane was brought-to-bed upon the very day that this credit arrived:—Declares, That Godfroi’s was the house frequented by the gentlemen of Reims, who, in general, recommended to the declarant to lodge there; and, so far as he can recollect, it was Godfroi’s people that recommended him to Madame La Brun; and when obliged to leave this last mentioned house, he himself went out to look for a house, and discovered Madame Michelle’s as a proper place, and thinks, to the best of his remembrance, her husband was a peruke-maker:—Declares, That the landlady (La Brun) had a daughter, come to the length of the age of a woman, and that there was a widow lady lodged in the house, whose name the declarant cannot recollect; nor had he further acquaintance of her, than seeing her in Lady Jane’s room, of whom, and of the children, she seemed to take a particular care; but one of the children, was sent out of the house soon after it was born: Declares, That he is not positive whether there was one or two servant-maids in the house; nor can the declarant recollect their names:—Declares, That there was also a widow woman lodged in the house of Madame Michelle, whose name he cannot recollect, who was also very ready to give assistance to Lady Jane and the child; and that either this widow, or the one formerly mentioned to have lived in Madame La Brun’s, which of the two the declarant cannot positively recollect, wanted to go along with Lady Jane; but the circumstances, in point of fortune, she and the declarant were then in, could not admit of it: Declares, That he does not know whether there were any other persons in Madame Michelle’s, though there probably might be, as it was a very large hotel; but if there was, the declarant had no communication with them:—And being interrogated who were the witnesses to Lady Jane’s being brought-to-bed on the 10th July, 1748? declares, Mrs. Hewit, the landlady, and her daughter, and the widow woman above mentioned, were in the room with Lady Jane, and the declarant was in the next room, and that Pierre La Marre, the man-midwife, was also present at Lady Jane’s delivery. Being interrogated, Were the persons who were present at the delivery desired to be present? or had they come into the room by accident? and how long time do you think they continued in the room? declares, That he cannot answer precisely the question, but believes, that
- p. 3. C.
- L.
4. D.
5. B.

“ that Mrs. Hewit would probably desire such persons as were proper
 “ to be present ; and as to Pierre La Marre, the man-midwife, he was
 “ ready upon a call for some days : Declares, That he cannot remem-
 “ ber how long these persons were in the room, but that Lady Jane
 “ was not long in labour : Declares, That it was some time in the fore-
 “ noon, at least before the declarant had dined, that Lady Jane was
 “ delivered : Declares, That Lady Jane, after her delivery, continued ^{p. 5. L.}
 “ in bed all the time she was in Madame La Brun’s, and should have
 “ continued a great deal longer, had she not been obliged to leave the
 “ house, by reason of its being infested with bugs.” What follows in
 the declaration, relates chiefly to the history of Pierre La Marre, and of
 Sir John’s acquaintance with him, and manner of finding him at Pa-
 ris, &c. which will be afterwards considered.

When examined the second day, he declared, “ That he was in an ^{purf. pr. 8.}
 “ error in mentioning a widow lady as a lodger in Madame La Brun’s, ^{A.}
 “ for there was none such there, and only one widow lady who lodged
 “ in Madame Michelle’s, as declared yesterday ; and further recollects,
 “ that there was one Mr. Con, a Scotsman, who frequented Pelletier’s
 “ coffee-house, and was introduced to the declarant by Mr. Pelletier ;
 “ and further declares, That he is persuaded, that Monsieur Pelletier,
 “ who is probably alive, as he was, in the 1748, a young man, will
 “ remember seeing the declarant and Pierre La Marre together.
 “ And the declarant being interrogate by the court, How what he had
 “ now said concerning one widow woman, could be reconciled with
 “ what he had yesterday declared, that there was a widow lady present
 “ in Madame La Brun’s, at Lady Jane’s delivery, declares, That the
 “ confusion he was in at the time of Lady Jane’s delivery, and the as-
 “ duity he remembered the widow lady had shown for Lady Jane and
 “ the child, in Madame Michelle’s, had, at this distance of time, per-
 “ plexed him, and induced him to think that there were two, but has
 “ now recollected the mistake, and declares, that there was no widow
 “ lady present at Lady Jane’s delivery.” Being interrogated by the ^{p. 16. E.}
 court, declares, “ That when he carried Lady Jane from Reims to
 “ Paris, he is confident that she was with child, by her having the
 “ common symptoms which attend women in that situation ; and is
 “ also confident and certain, that Archibald Douglas, the defender, is
 “ one of the two sons born by Lady Jane in Madame La Brun’s, as be-
 “ fore declared to.”

Sir John was afterwards examined on oath as to certain other parti-
 culars not contained in his declaration ; and, in this deposition, among
 other things, he gave an account of the journey which Lady Jane,
 Mrs. Hewit, and he, made in November 1749, in order to bring the
 child

child Sholto from the nurse, and of their return to England with both the children.

Def. pr. 447, G. And, lastly, Sir John, when on death-bed, in the presence of two clergymen, and other witnesses, made a solemn declaration, affirming and acknowledging the defender to be his son by Lady Jane Douglas.

Murthly, June 7th, 1764.

" Having lately had some severe fits of the gout in my stomach, with my health in other respects much impaired.—These, with my great age, going seventy-six, makes it appear incumbent on me to make the following declaration: As aspersions have been thrown out by interested and most malicious people as to the birth of Lady Jane Douglas her children, in order to rob the surviving child, Archibald, of his birth-right, by making his parents, Lady Jane and me, appear infamous, to make him illegitimate, I Sir John Stewart of Grandtully, do solemnly declare, before God, that the fore mentioned Lady Jane Douglas, my lawful spouse, did, in the year 1748, bring to the world two sons, Archibald and Sholto; and I firmly believe the children were mine, as I am sure they were her's.—Of the two sons, Archibald is the only in life now. I make this declaration as stepping into eternity, before the witnesses after mentioned, &c."

First objection to Sir John's account of the birth.

The pursuers, however, say, that Sir John has varied in his account, and they take hold, imo, of a note given by him on the 13th May 1756, to the Honourable Mrs. Napier, in the following terms:

" Monsieur la Mar accoucheur
 " chez Madame Michelle
 " fauburg St. Germain a paris
 " dans le moy de juliet ver le
 " Commencement du Moy 1748
 " monsieur et madame Stewart
 " logerent ou madame Stewart
 " accoucha du jumaux
 " presnte l hotefs et sa fille marie
 " monsieur la mar accoucheur
 " et madamoy felle Huette

But this note, containing a confused jumble of names, and which indeed makes no mention of La Brun, is explained by Mrs. Napier as follows:

Purs. pr. 9, K.

She deposes, " That having put some questions to Sir John concerning the birth, he answered, that so many years had past, and so many misfortunes had happened to him, some of which he enumerated, that he could not be so *distinct in names* as he could wish, in answer to the deponent's question. Deposes, that upon the deponent's expressing that she could not understand how that might be, Sir John told her, that, for different reasons, they had been ob-
 " liged

“ ligned to change houses often, about the time of Lady Jane’s lying-in,
 “ particularly because *one of the houses was full of bugs*, and another
 “ smoky; so that he could not say *what precise house* the children
 “ were born in; but he would consider of it at home, and make a
 “ note of all these circumstances: to which the deponent said, she
 “ would be glad if in the mean time he would mark down such par-
 “ ticulars as he was sure of, and let her have the others when more at
 “ leisure. Deposes, that she then gave him pen and ink for that pur-
 “ pose; and he then made a memorandum of such things as he re-
 “ collected.” The witness further deposes, “ That she knows she had Purf. pr. 10.1.
 “ a subsequent conversation with Sir John Stewart upon the same sub-
 “ ject, in which he related more particulars, upon which the depo-
 “ nent meant to found a second letter to Lady Frances Stewart; and
 “ for that reason *she made a little memorandum of names*, among which
 “ were those of La Brun and Peter La Marre, as also of Colonel Foun-
 “ tain, oculist to the invalids at Paris, who the deponent thinks Sir
 “ John mentioned as the person who first introduced him to Peter La
 “ Marre. And the deponent now produces the said memorandum, of
 “ her own hand-writing, which is marked and signed by the deponent
 “ and commissioner, as relative to this oath.”

This last note mentioned by Mrs. Napier, appears to be of her hand-writing, and contains the names of La Brun and La Marre, as deposed to by her, from which it is certain that Sir John mentioned these names to her at the time, after he had recollected further particulars; and it is plain from the first conversation which he had with Mrs. Napier, that though in his attempt at that time to recollect names, he made the landlady, in whose house the delivery had happened, *Michelle*, in place of *La Brun*, yet he affirmed nothing positively on that head; on the contrary, he talked of their having *changed houses*, of his being unable to say, what *precise house* the children were born in, and particularly mentioned a house that was *full of bugs*; and though he did not recollect the name of it at that time, he, in his next conversation, told her, that La Brun’s was the house of delivery.

Another note, of Sir John’s hand-writing, bearing the delivery to have happened in the house of Madam La Brun, Fauxbourg St. Germain, and that on the 20th Lady Jane was removed from that house Purf. pr. 17.
 on account of bugs, to Madam Michelle’s, appears also to have been delivered about that time by Sir John to Mrs. Napier, as Mr. Brown, Purf. pr. 19.
 the defender’s agent, has deposed that he received this last note along G.
 with the other papers which had been in Mrs. Napier’s possession. Sir John also appears to have given a note concerning the birth to Mr. Loch, about 1758 or 1759, to be shown to the Dutcheß of Douglas, which note is above recited, and contains the names of La Brun, La Marre, &c. and mentions those present at the delivery.

It is plain therefore that the omission of La Brun's name in the first note was merely owing to the want of recollection, he himself having expressly told her at the time, that he did not remember all the names. He could never mean purposely to fix on a wrong place, for this could not fail to be detected, if enquired into; and, supposing a fraud to have been committed, it has already been shown from Mr. Loch's deposition, that a house was fixed on for the delivery before Lady Jane's death, viz. La Brun's.

The pursuers endeavoured to show, that this second conversation between Sir John and Mrs. Napier, in which he corrected the omission of the first, must have been after the time of Mrs. Napier's writing to France to make enquiries about the birth, and after she received an answer, containing the unsuccessful result of these enquiries. But no evidence of this appears, and the memorialist is well assured, that Sir John was not at the time informed, that enquiries were to be made.

Purs. pr. 12, C. Mrs. Napier says, " she believes she did write to Lady Frances Stewart, (her correspondent in France) in consequence of the second conversation had with Sir John, as aforesaid, and thinks she wrote this second letter very near the time of her setting out for England in the month of November 1756 years; and that, in case of the letter's being lost, in order to supply her own memory with particulars, she carried to England with her the first letter from Lady Frances Stewart, and the memorandum, which agrees with the last conversation she had with Sir John, as aforesaid." But whether the time of her writing this second letter, was before or after receiving an answer to the first, is not clear from the proof, and it appears from Lady Frances Stewart's oath, that the second letter never came to hand.

2d Objection
to Sir John's
account.

2dly, The pursuers take hold of a variation in Sir John's declaration, with regard to the widow-woman in La Brun's. But it is plain, that in his declaration, his ideas were confused with regard to this widow-woman, as it happened that there was also a woman-lodger in Michelle's, and he seems to have had no distinct remembrance at that time how the fact stood, whether there was a widow-woman in both the houses, or only in one of them, but his account from the beginning was, that there was a widow-woman also in the house of La Brun, and present at the birth as your Lordships will observe from his note produced by William Loch, where he expressly mentions a widow-lady, who lodged in the house, and was present at the delivery.

Mrs. Hewit's
account of the
birth.
Ser. p. II, C.

Mrs. Hewit, in the service, after bearing testimony to the pregnancy at Aix-la-Chapelle, Liege, and upon the road, depones, " That, while they staid at Reims, Lieutenants Mackenzie and Maclean, two British officers, who had been taken prisoners by the French, were
" in

" in that city, and were three or four times a week with Lady Jane:
 " that the first of July, Lady Jane, Sir John, and the deponent, set
 " out in a stage-coach for Paris, and that the two officers above men-
 " tioned, lifted Lady Jane into her coach, because she was so heavy,
 " that she could hardly stir.—Depones, That upon the 10th July, Ser. p. 12, C.
 " Lady Jane was delivered at Paris of two sons, and that the deponent
 " was present at their birth, and received them both into her lap,
 " when they came into the world: that the eldest, whose name is Ar-
 " chibald, and is the present claimant, was a strong healthy child;
 " but the other, whose name was Sholto, was so weakly, that it was
 " not believed he would live above twelve hours, and for that reason,
 " the man-midwife, whose name the deponent thinks was something
 " like Le Marr, but cannot be positive, as she does not understand
 " French, immediately christened him; that their landlady and her
 " daughter were present at the birth, but she does not remember any
 " of their names, as they were French: that they staid in that house
 " for ten days after the delivery, when they were obliged to transport
 " Lady Jane to another house, on account of bugs: that they re-
 " mained in Paris altogether for about three weeks, when they were
 " advised by the man-midwife to go to a village in the neighbourhood
 " for more air, the weather being excessively hot: that they staid in
 " that village for about a fortnight, during which time Lady Jane re-
 " covered surprisingly: that, from this village, they returned to
 " Reims, and carried the eldest boy along with them, who was not
 " then christened: that they left the youngest, on account of his weak
 " state, at Paris, under the care of the man-midwife, who got a faith-
 " ful nurse to him, under whose care he grew much stronger; and
 " that the man-midwife wrote every week to Sir John, giving him an
 " account of the boy's health, and that he was suckled for sixteen
 " months."

Having again been examined in the cause as a witness for the pur- Pur. pr. 2524.
 suers, she has deposed, " That Lady Jane and Sir John, on their ar- E.
 " rival at Paris from Reims in the coach, as is above mentioned, stop-
 " ped at the place where the stage-coach generally stops, and then,
 " having got a hackney-coach, they drove away to the inn kept by
 " Godfroi, to which they had been recommended by some person at
 " Reims, and, as the deponent thinks, by Mr. Andrieux: That they
 " left the other passengers at the place where the stage-coach first stop-
 " ped, and knows not what became of them. Depones, That, to the best
 " of the deponent's remembrance, Sir John and Lady Jane continued, at
 " this time, three days and three nights at Godfroi's. Depones, That,
 " during Sir John and Lady's stay in Paris, at this period, when Lady
 " Jane was delivered, they did not return to lodge at Godfroi's, before
 " their setting out from Paris for a village near it, and from thence to

253, C.

“ Reims. Depones, That Sir John went and hired other lodgings, to
 “ which Lady Jane, he, and the deponent went from Godfroi's : That
 “ Lady Jane was delivered in these lodgings, and some time thereafter
 “ they went to other lodgings in Paris : That the deponent cannot tell
 “ the French names, but thinks that she would know them if they were
 “ repeated to her ; and that the names now repeated by the Lord Presi-
 “ dent, of La Brun and Michelle, she believes were the names, viz.
 “ La Brun, the name of the first, and Michelle the name of the other.
 “ Depones, That when at La Brun's, and afterwards when at Michelle's,
 “ their victuals were furnished by the respective houses. Depones,
 “ That she thinks that Lady Jane was four days at La Brun's before
 “ her delivery, which she is positive happened on the 10th of July,
 “ 1748.—Depones, That, besides Madame La Brun herself, there was
 “ in her family her daughter, who was married, as they said, to a per-
 “ son in the army, a servant-maid, and a woman-lodger ; but the de-
 “ ponent cannot recollect any of their names. Depones, That, besides
 “ Madame Michelle herself, there were in her family a daughter of
 “ her's, also said to have been married, a servant-maid, and a woman-
 “ lodger, who had a female-child of about ten years of age also in the
 “ house ; and this woman said she was a widow, and that she had a
 “ law-plea ; and she afterwards offered to hire herself as a servant to
 “ Lady Jane. Depones, That she cannot recollect any of their names.
 “ Depones, That, as the deponent thinks, Lady Jane went from God-
 “ froi's to La Brun's in the afternoon, and that La Brun's was not far
 “ distant from Michelle's, though they passed through many lanes in
 “ going to it, and that Lady Jane was carried from La Brun's to Mi-
 “ chelle's about mid-day, in a coach. Depones, That, both in La
 “ Brun's and Michelle's, Lady Jane, Sir John, and the deponent, had
 “ two rooms, and another little one in which the deponent slept, all
 “ upon one floor : and, though the deponent is not positive, yet she
 “ thinks it was upon the first floor in La Brun's, and upon the second
 “ in Michelle's, which last house consisted of more storeys than the first.
 “ Depones, That she cannot tell the colour of the beds, or describe the
 “ furniture in either of the houses, only that they were best in Mi-
 “ chelle's, though in both very indifferent. Depones, That, at this
 “ time, she is not positive in what manner the different houses entered,
 “ but she thinks La Brun's was off the street, and Michelle's by a little
 “ court. Depones, That when Lady Jane went from Godfroi's to La
 “ Brun's, she was carried in a coach, and the deponent was alongst
 “ with her, and, in order to give her a little air, the coach drove down
 “ the side of the river, and then returned and set them down at La
 “ Brun's door. Depones, That the woman-lodger at Michelle's lived
 “ on the same floor with Lady Jane, but the deponent does not know
 “ upon what floor the woman-lodger in La Brun's lodged, nor does
 “ she

“ she know where Madame La Brun’s own apartment was. Depones,
 “ That, by reason of the heat of the weather, Lady Jane was not much
 “ in her bed, either at Michelle’s, nor afterwards at the village near
 “ Paris. Depones, That, during the time of their stay at Paris at this
 “ time, Lady Jane, the deponent, and Sir John, never went to Ver-
 “ failles. Depones, That during this period of their stay at Paris, Sir
 “ John and the deponent never went from Paris to the country, to
 “ bring home any of the children, but that, upon Lady Jane’s leaving
 “ La Brun’s, Archibald, the eldest, was sent to the house of a woman
 “ living in Paris, to be suckled, till a proper nurse was got, and that
 “ Sir John and the deponent went and brought the child to Michelle’s
 “ from that house, where he had only staid two days, and that Sir
 “ John’s reason for bringing away the child was, his finding the wo-
 “ man intoxicate with liquor, upon which he immediately sent back
 “ the coach for the deponent, and then they brought away the child
 “ to Michelle’s, and that Madame Michelle got a woman to suckle the
 “ child till they got a proper nurse. Depones, That, in a few days,
 “ they hired a nurse, but she proving a very bad one, Madame
 “ Michelle perswaded the woman whom she had first got to suckle
 “ him to go along with them to the village near Paris, which she ac-
 “ cordingly did; but the nurse’s child having died there, and her
 “ husband having gone to bury it, she would not go farther with them.
 “ Depones, that the nurse that they hired, as was said, after their
 “ coming to Michelle’s, upon her appearing to be a bad one, was
 “ tried, by putting a whelp to suck her breasts; and they also disco-
 “ vered her to be a bad woman, by having the King of France’s mark
 “ on her as a thief, and that Sir John had found this one in the
 “ suburbs, or somewhere else, but where, the deponent is not positive.
 “ Depones, that the nurse who went to the village was a taylor’s wife.
 “ Depones, that the whole night before Lady Jane’s delivery, she was
 “ uneasy, but bore it; that, about eleven o’clock in the forenoon, she
 “ became extremely ill, and continued so till she was delivered, betwixt
 “ three and four in the afternoon. Depones, that Sir John, during
 “ their stay at Paris, attended generally Lady Jane, and that, when he
 “ went abroad, it was only for a very short time, and that Lady Jane
 “ had no other attendants, except the deponent and the people in the
 “ house, nor did she chuse to have any other. Depones, that the de-
 “ ponent had learnt from Sir John Stewart, that one La Marre was to
 “ attend Lady Jane as a man-midwife, and accordingly, on the day
 “ of the delivery, about ten o’clock in the morning, Sir John went in
 “ quest of him, and soon thereafter returned with him to Madame La
 “ Brun’s; that the deponent does not know if this was the first time
 “ that Lady Jane had seen this man-midwife, but that the deponent
 “ never had before seen him, and that he was a middle-sized black or
 “ grim

“ grim man, and lean or thin, nor can the deponent say what age he
 “ was, nor does she know where he lived in Paris, nor had the depo-
 “ nent any conversation with Lady Jane concerning this man-midwife,
 “ prior to her delivery. Depones, that about an hour or two after
 “ the delivery, the youngest child appearing so weak, that it was not
 “ believed he could live till next day, the man-midwife baptised him,
 “ and the deponent, though she cannot say what words he used, saw
 “ him make the sign of the cross on his breast. Depones, that, du-
 “ ring the time that Lady Jane was ill, Sir John was going and coming
 “ to the room; but not being there at the actual delivery, the depo-
 “ nent went immediately and acquainted him, upon which he came
 “ into the room, and saw both the children. Depones, that Madame
 “ La Brun got the first nurse for Archibald, the eldest child, who con-
 “ tinued with them during their stay at La Brun’s, and, at their depar-
 “ ture therefrom, carried him to her own house at Paris, as has been
 “ already deposed.”

In the service, it would appear that she has not been so particularly examined as to the witnesses present, or the persons who lodged in La Brun’s; but in her deposition she expressly says, that there was a widow-woman in the house, which is agreeable to the accounts given by Lady Jane and Sir John. She also gives descriptions of Madame La Brun and her daughter, and of Mr. La Marre.

Such are the material circumstances deposed to by Mrs. Hewit, from which it appears, that she has twice, upon her solemn oath, bore direct testimony to the facts uniformly asserted by Sir John and Lady Jane Douglas, with regard to the time, place, witnesses, and other particulars of the birth.

1st Objection
to Mrs. Hew-
it’s account
of birth.

The pursuers endeavour to take hold of a letter wrote by Mrs. Hewit to a clergyman, since her deposition; in which letter she appears to have varied a little from her former account, with regard to the number of days that Lady Jane was in La Brun’s after the delivery. The letter is in these words:

“ Sir,

“ As I find myself very weak and am told am letley to dey, I was
 “ fond to see you to eas my minde; for I find in reeding over Mr.
 “ Douglasses serves that I was in a mistake in declering that it was the
 “ tenth day after Lady Jane was delivered that we left the hous of
 “ Madem la Broun for it was the 6 day after, what occasioned my
 “ mistake was scertainly that I still persifted Lady Jane when she in-
 “ sisted to be removed from the bogs. that it was not possible for her
 “ to move till the tenth day at sounest, for it would kill her, but a-
 “ way she would be & said any chance was better than staying to be
 “ eat up alive by the vildest of vermin. And it being the tenth day
 “ of our being in la Broun’s hous that we left it, might help to make
 “ the

" the tenth roun in my mind. I have told of this miftake to Mr.
 " Colvill to fee if was poffible to have it rectified They tell me it can-
 " not, but I hope you Sir can eas my mind. As all I declared on my
 " examination is trou, but that miftak of the day of livin la Broun's
 " hous which I thought trou when I faid it, and this I declare to you
 " Sir was I to flap into eternity this moment.

" Edin. January 11 1763."

In her depofition fhe fays exprefly, that Lady Jane was *ten days* in Ser, p. 12, B. La Brun's after the delivery, which is agreeable to the account given by Ifobel Walker, and to her own letter wrote at the time, wherein fhe fays, that Lady Jane was in bed *nine* days. When examined, however, at the diftance of fourteen years, fhe could not from memory alone, be abfolutely certain as to the precise number of days of remaining in this or the other houfe; and though fhe appears to have been right in her depofition, and wrong in her after calculation of times, yet, from an imagination that her oath was erroneous in this particular, fhe feems to have thought it incumbent on her to attempt a rectification of it. She thought herfelf dying at the time, as appears from her letter, and fhe feems to have conceived a falfe apprehenfion concerning this fingle part of her evidence. One thing obfervable in the letter is, that fhe makes Lady Jane to have been ten days in whole in the houfe of La Brun, and, in the confufion of her ideas, fhe counts the ten days, at one time, from the day of the entry, and at another time, from the day of the birth. Her writing fuch a letter fhow, that fhe was neither under influence, nor in any concert, and it cannot in any fhape invalidate her evidence, on the contrary, it tends to fupport and ftrengthen thofe material parts of her depofition, which the purfuers fuppose to be falfe, as it cannot be imagined, that, in her then fituation, when fhe thought herfelf on the brink of eternity, fhe would have been fo anxious to explain a circumftance, in which her memory might eafily be fupposed to have failed her, and, at the fame time, make no difficulty of going to death with falfehood and perjury on her head, in circumftances, concerning which fhe never could be under any miftake.

A fecond variation in Mrs. Hewit's account of the birth, is faid to appear from an intended letter, or fcroll of a letter, in her hand-writ-
 ing, to the Duke of Douglas, lately difcovered in her repositories *. 2d Objection
to Mrs. Hew-
it's account
of birth.

2 Y

That

* N. B. This part of the memorial, and all that follows, was revised and printed fub-
 fequent to the death of Mrs. Hewit, which happened upon the twenty-second September
 1766.

That your Lordships may be the better enabled to judge of the argument arising from this letter, it will be proper to recite it verbatim.

“ My Lord

“ As I had the honner to be a bout your in comparable sifter Lady Jane from my infaincy in Greatude and honner I am bound to dow all the justice in my power to her memery

“ My dear Lady Jane had the misforten to incurr your Grecs desplefier by her continuing to long in keeping ene onworthy Creater pege Ker who was the wratsh that had the onlly hand in perten your Grec and her this Lady Jane repented most fadly but ales it was to let when she found out what a wratsh she was and Lady Jane being deprived of the wisht for pleafer and happins of feing your Grec her Laps Eanemes and on of your famely who is now Gon took adventesh of the unhappy displeaser she lay under by misrepresenting her to your Grec most unjustly and finding she she had no opertunity of justifying her self some Credit was given by your Grec to thos artfull defining Villains So that they Came at last to the Udaicious impudinc of attacking your Lovely Sifister her honner character & truth all which was iver well Complitley estbifsted all the woredl over by all the Great and Good ons and best of Judges they have iven dared to dout and ventert to asert that the two Children she had was not hers but imposters but all who had the Hon^r and happins of knoing that dr Angell know how incapable on of her hon^r truth and religion was of iver thinking on soch Veleny no her Soll was a bove eny soch highnes Crime to a broaht on the noble and illustres famely she was comed of but she is now far a bove thos letell lo cralen worems that iver dard tomedell w^t her Noble and great Character.

“ My Lord duke I have iver been in a bad Stett of health Sinc iver I lost Lady Jane and I dont know how Soun I may live this woredl so Cannot in justes or Confinces live it without Declaring the Turth in regard to the injured great and worthey Lady Jan Douglas with respect to the dr Children I do Sollemenly declar and am ready to swear that I recved they two lovely babs out of the bed as they Come to the woredl from L. Jane the land Lady Madam Michall and her doghter present Lady Jane's qualty being conseled on the account of the stretend Circumstince she was then in so was
“ obliged

1766. The first 176 pages were cast off prior to her death. This is the reason why Mrs. Hewit, in the beginning of the memorial, is mentioned as alive, and, in the after-part, as dead. The letter, or scroll, here mentioned, having been found in consequence of an inspection of her papers and repositories, authorised by one of the commissaries of Edinburgh, the pursuers have since obtained an order of the court for transmitting it into process; for which reason, the defender thought it necessary, in this paper, to make some observations upon it, though not founded on in the pleading.

“ obliged to be cald Madam Stewart I know no adventsh she could
 “ have in finden out when she could skerclive her self and famely,
 “ nerther can I by this Deckelereation have eny other motive but to
 “ support truth in opefation to fales Calumny vindecate my dr Angells
 “ pious memery to the Confeution of thos definen Velenes who is ad-
 “ ashesly attempted to blast her Carecter.”

The passage taken hold of is that, where she mentions the Landlady Madam *Michalle* to have been present at the birth, and the pursuers will no doubt argue upon it as a further evidence against the existence of Madam la Brun, and that Michell's was originally given out as the place of delivery. Every other part of the letter makes in favour of the memorialist, as it contains the strongest and most positive assurances of the truth of the birth, but the woman in whose house Lady Jane was delivered is erroneously named *Michalle*, in place of La Brun; and so much were the pursuers elated with this seemingly important discovery, that, immediately upon getting access to the letter, which they did in a manner not extremely regular, they, without any permission of the court, or order of law, caused publish and disperse it through the kingdom, with a false title, bearing it to be the scroll, or a copy of a letter from Helen Hewit to the Duke of Douglas, *ascertaining Michelle's to have been the house of delivery*; thereby demonstrating their own sense of the weakness of their cause, which could draw aid from so inconclusive a circumstance, and so unfair a publication.

The memorialist cannot, with permission, perceive in what manner this intended letter or scroll *ascertains* Michelle's to be the house of delivery contrary to the evidence in process that the delivery happened in La Brun's. It ascertains no more than this, that Mrs. Hewit in a letter which appears to have been wrote with an intention of certifying her knowledge of the birth to the Duke of Douglas, but which was probably never sent to him, falls into the same confusion or inaccuracy with regard to the landlady, who was present at the birth, which has all along attended her recollection of French names.—When examined in the service, she does not appear to have remembred any names of landladies or others in France, who were connected with the birth.—Afterwards when she had occasion to write the letter, above recited, to Mr. Harper, she mentioned La Brun's as the house of delivery, but which name she seems only to have recollected upon perusing the service, where she saw La Brun's name mentioned, and it is plain she must have had the service before her at the time of writing that letter, as it bears expressly, that it was on reading the service, she had discovered her supposed mistake about the time of leaving La Brun's.—At

Purf pr. 252,
1. a fubfequent period, when examined before your Lordships, ſhe ſeems to have forgot the names ſhe had read in the ſervice.—She told plainly that ſhe did not recollect French names, but that ſhe would probably know them, if they were repeated to her; and the Lord Prefident having accordingly repeated the names of La Brun and Michelle, ſhe ſaid, ſhe believed la Brun was the name of the houſe where Lady Jane was delivered, and Michelle that of the houſe to which ſhe afterwards removed.

Indeed it would have been extremely ſurpriſing if Mrs. Hewit had been correct in her remembrance of theſe names. It is in proof, that ſhe did not underſtand one ſyllable of the French language, and even where perſons, travelling in a foreign country, do underſtand the language, it is not once in ten thouſand times, that they aſk the names of their landlords and landladies, or retain them in their memories, if they ſhould happen at the time to know them.—A perſon may more naturally remember the *ſign* of the inn, or *name of the hotel*, which laſt, in France, is always inſcribed upon the front of the houſe, e. g. the *Hotel d'Anjou*, *Hotel de Chalons*, &c. but the names of the landlords and landladies are ſeldom known, and much ſeldomer remembered.

In the preſent caſe it appears, that Sir John Stewart, Lady Jane and Mrs. Hewit happened accidentally to know at the time the names of the people, in whoſe houſes they reſided at Paris in 1748.—*Godfroi* had been recommended to them by the people of Reims, and their letters, while they were in Paris, came directed to Godfroi's care, ſo that they could not well be ignorant of his name. *La Brun* does not appear to have kept an hotel, but ſhe was probably a *garde malade*, who waited on Lady Jane during her in-lying, and it was natural that her name ſhould be mentioned to them by La Marre.—*Michelle*, beſides being maſter of the hotel d'Anjou, was the barber that ſhaved and dreſſed Sir John, and his wife was ſerviceable to Lady Jane in finding nurſes; from which connexion it has probably ariſen, that they alſo came to know the names of this family. But is it to be ſuppoſed, that Sir John, Lady Jane and Mrs. Hewit would be at pains, to retain exactly in their memories, the names and designations of ſuch a number of ſtrangers, with whom they had only this ſhort and tranſient acquaintance?—They could not prophesy, that the birth of the defender was in after times to be diſputed; and that it might be of importance, to mark down and retain, with precision, the name of every perſon in France, with whom they had any connexion during the period of delivery.

It appears, that both Sir John and Mrs. Hewit have fallen into a number of miſtakes with regard to French names, which could not have

have been intended ; for example, Sir John, when examined before your Lordships, had forgot the name of the nurse Favre, which he ought to have known better, and remembered longer than those of Michelle and La Brun, and he made her the wife of a taylor in place of a joiner.—He mistook also the name of the nurse whom he got at Dam-martin ; and there will be occasion hereafter to notice a very singular confusion, which he appears without the least design to have fallen into, with regard to the houses which he lodged in at Reims.

Neither Sir John Stewart nor Mrs. Hewit ever said that the birth happened in the *hotel d'Anjou*, which it was natural for them to have done, if they had meant to fix on that house as the place of delivery ; but Sir John, when questioned by Mrs Napier in the year 1756, after saying that he had *changed houses often*, and could not at that time charge his memory with the names of particular houses, mentions Michelle as the name of the landlady in whose house Lady Jane was delivered. This was no mistake in the house, but only a mistake in the landlady's name, which he soon after corrected, by mentioning the name of La Brun in a subsequent conversation with Mrs. Napier.—In like manner Mrs. Hewit, in the writing now founded on, does not point out a different house, but mistakes the name of one landlady for another ; and the memorialist cannot help conjecturing, that she has been led into this mistake by Sir John himself. Some passages of the letter have very much the appearance of Sir John's stile, and it has very probably been wrote much about the same time that Sir John gave the first note above mentioned to Mrs. Napier.—Sir John came to this country from London in the year 1755.—Stockbriggs, who must have been the person pointed at in the beginning of the letter, died in the end of summer that year.—Sir John, when questioned by Mrs. Napier, has probably imagined, that she and Lady Schaw intended to make some application to the Duke in behalf of the defender ; and it was natural for him to desire Mrs. Hewit to write such a letter to the Duke, in order to fortify and second the application.

The confusion of landladies, and mistaking the name of the one for the other, was not at all unnatural, and is rather a proof of innocence than of guilt. Had there been any imposition in the case, every circumstance of this kind would have been accurately concerted, and whether the birth was real or fictitious, they could never mean to fix on a house for the delivery, where Lady Jane did actually reside after the birth, and where it could easily have been discovered that she was not delivered.

But, after all, where is the evidence that this mistake was fallen into? The pursuers seem to consider this writing, which has been found in her repositories, as the scroll of a letter, the principal of which was sent to the Duke of Douglas. If so, how does it appear, that in the principal letter, which was dispatched to the Duke, the mistake was not rectified? It does not appear that the Duke was ever heard to say, that he had a letter from Mrs. Hewit, mentioning Lady Jane to have been delivered in the house of a woman called Michelle; and, indeed, if Mrs. Hewit did really send such a letter to the Duke, it must have been a mere blunder, without design, because, supposing the birth to have been fictitious, Mrs. Hewit could never intend, in a letter wrote for the express purpose of vindicating Lady Jane, to throw in a circumstance which could not fail to lead to immediate detection, more especially, as there was not the least call upon her to mention the landlady's name, more than the names of the other persons who were present at the birth.

But, indeed, it is next to certain, that no such letter was ever sent to the Duke. None of those who were about him ever heard that he had any correspondence with Mrs. Hewit upon the subject of the birth, till he came to live in the Abbey of Holy-rood-house, in 1758; and the writing itself has the appearance not of a scroll or copy, but of an unfinished principal letter; for it is wrote altogether in that form, and it seems plain, that after proceeding so far, she has altered her mind and thrown it by, without compleating or sending it off. The pursuers will possibly say, that Mrs. Hewit, in her last deposition in March 1765, has fallen into a mistake in saying, that she had no *letters*, nor *copies* of letters, wrote by her to the Duke.—At the time of this examination, she was in very bad health, confined to her bed, and unable to sign her oath; so that it will not be surprising if her memory was not quite entire; at the same time, as the writing in question was neither properly a letter, nor copy of a letter to the Duke, but a *project* or *draught* of a letter, which was never compleated, she has been guilty of no mistake in this particular.

This letter, therefore, or scroll of a letter, which has afforded so much triumph to the pursuers, will be found to be of little avail to them, and the supposed variations or forgetfulness of Mrs. Hewit and Sir John, are of no earthly consequence. Had a fraud been committed, they would have been much more pointed in their remembrance of names and circumstances.—A story would have been accurately concerted, and, of all things, they would have avoided pointing out the very houses where Lady Jane resided, at or about the time of her supposed

posed delivery.—The mistake, with regard to Michelle, may afford matter of cavil, but cannot have any real influence on the cause.—If there was any fraud in the case, the pursuers have been singularly unlucky in the investigations which they have made into the private writings of the supposed guilty persons.—Pocket-books, and letters of the most secret correspondence between man and wife, have been called for and exhibited.—Methods unprecedented and irregular have been taken to rummage and inspect the repositories of the dead.—All this has turned out against the pursuers.—Much proof, and many arguments, have been furnished by these private documents in support of the birth, and nothing of any consequence has appeared from them against it.

Another attempt was made to prove variations in Mrs. Hewit's account of the birth, by calling witnesses to relate, at second hand, a parcel of tea-table conversations, between her and her female acquaintance. With this view, the two Miss Cranstons, Mrs. Cant, Mrs. Dickie, &c. were examined. Some of them tell a confused ridiculous story of Mrs. Hewit's saying, that she was left behind with the baggage, plainly alluding to the circumstance of leaving the servant-maids at Reims. But your Lordships will observe, what Mrs. Dickie, one of those witnesses, deposes, " That some years ago, the deponent having gone to the house of Mrs. Mackrabbie, milliner in Edinburgh, she found there, with Mrs. Mackrabbie, a bulky woman, whom the deponent did not know: That some how or other, Lady Jane Douglas's name was mentioned in the conversation, and the deponent having taken occasion to ask, whether these children were really Lady Jane's? this bulky woman was much offended, and turned very warm upon the mention of this, or that the deponent should seem to doubt, that the children were Lady Jane's: That the deponent began to suspect, that this bulky woman was Mrs. Hewit; and Mrs. Mackrabbie directly took occasion to mention Mrs. Hewit by her name: That the deponent heard Mrs. Hewit upon this occasion say, that she got the babies in her lap, and said so very warmly, immediately on the deponent's seeming to entertain any doubt of the childrens being Lady Jane's. Depones, that Mrs. Hewit was so much affected, that she went out of the room, seemingly indisposed, and did not return while the deponent was there. And being interrogate, whether Mrs. Hewit said, at the foresaid conversation, that she had been present at the birth of Lady Jane's children? or that she had been at that period attending the baggage? Depones, that she does not remember to have heard any thing said

3d Objection
to Mrs. Hewit's account.
Purs. pr. 69,
70, 71.
345, I. 346.

" by

“ by Mrs. Hewit as to these matters, further than as already deponed
 “ to. And being interrogate, whether the deponent had related the
 “ conversation aforesaid with Mrs. Hewit, in presence of Mrs. Char-
 “ teris, William Hepburn, surgeon, and others, in Mrs. Charteris’s
 “ house? and whether, on that occasion, the deponent said, that Mrs.
 “ Hewit had told her, that she was not present at the birth of Lady
 “ Jane’s children? Depones, that last winter the deponent met with
 “ Mr. Hepburn, in the house of Mrs. Charteris, who was then in
 “ bed indisposed: That the subject-matter of this process came to be
 “ talked of: That Mr. Hepburn expressed himself in the most zealous
 “ manner for the Duke of Hamilton, and was so noisy, that he disturb-
 “ ed Mrs. Charteris: That he used great freedoms with Mrs. Hewit’s
 “ character: That the deponent believes she mentioned, on this occa-
 “ sion, what passed betwixt Mrs. Hewit and her, as above, but does
 “ not remember to have said any thing as to Mrs. Hewit’s having
 “ told the deponent, that she was not present at the birth of the chil-
 “ dren, though the deponent understands, that Mr. Hepburn has since
 “ given out, that she, the deponent, should have said so.”

This oath, is, of itself, a sufficient answer to all those hear-say tea-
 table conversations, which the pursuers have been pleased to introduce
 into the proof; and, indeed, the intended letter to the Duke of Dou-
 glas, above recited, affords real evidence, that the second-hand testi-
 monies of Mrs. Cant, Miss Cranstons, &c. are totally erroneous, as it
 is incredible, that Mrs. Hewit should have said to them, that she was
 not present at the birth, and to the Duke of Douglas, that she was
 present.

A variety of witnesses, who have been long acquainted with Mrs.
 Hewit, and who have taken occasion to question her about the parti-
 culars of the birth, expressly depone, That they have always heard her
 Def. pr. 452, tell the same uniform story without variation. Mr. Alexander Wood
 D. depones, “ That he is acquainted with Mrs. Helen Hewit, and has
 “ been so for about thirteen years; that he has often heard her talk of
 “ her having been at Paris, when Lady Jane Douglas was delivered
 “ there of the defender and his twin-brother; and has heard her say,
 “ that she was present at the delivery, and heard her say so, as often
 “ as she talked of the matter, and never heard her vary in her accounts
 “ of it.”

Def. pr. 42, David Clark deposes, “ That he has been acquainted with Mrs. Hew-
 F. it for above ten years past, she having lodged most of that time in
 “ the deponent’s house; that the deponent has frequently, in that pe-
 “ riod

" riod of time heard Mrs. Hewit tell that Lady Jane's children were
 " born at Paris, and that she, Mrs. Hewit, was present at the birth;
 " and the deponent never heard her vary in her account of that mat-
 " ter. Depones, that Mrs. Hewit told the deponent that she had call-
 " ed for, and got access to the Duke of Douglas, when his Grace was
 " staying in the Abbey. And the deponent knows that Mrs. Hewit,
 " while in the deponent's house, received messages from the Duke of
 " Douglas by his servant Greenshiells; and that, on these occasions,
 " when she received messages, Mrs. Hewit was confined to the house,
 " as she has been in the winter-time, for some years past. Depones,
 " that when the Duke of Douglas lived at the Marquis of Tweeddale's
 " house in Edinburgh, he once visited Mrs. Hewit at the deponent's
 " house, either in the end of March or beginning of April 1760, ac-
 " companied with a servant, whom, the deponent believes was Green-
 " shiells, but is not certain; and that the Duke staid with Mrs. Hewit
 " about an hour at this time; that the deponent was employed that
 " same night by his Grace to make a wig for him, which, after the
 " deponent had made, he carried to his Grace at Bothwell, who on
 " that occasion enquired kindly for Mrs. Hewit, and desired the depo-
 " nent again and again to be a good landlord to her."

The reverend Mr. William Harper depones, " That he is acquaint- Def. pr. 450;
 " ed with Mrs. Helen Hewit, and has been so from the spring 1756; F.
 " that he has frequently since that time been told by Mrs. Hewit, that
 " she was present when Lady Jane Douglas was delivered at Paris of
 " the defender and his twin-brother, and never heard her vary with
 " respect to her being present at the birth of these children, or with
 " respect to their being Lady Jane's; on the contrary, was always
 " steady and consistent with respect to these matters. Depones, that
 " the first particular conversation which he remembers to have had on
 " these matters with Mrs. Hewit, was on the occasion of Mr. Alexan-
 " der Hunter, merchant in Edinburgh, his coming to the deponent,
 " and informing him, that the Dutchess of Douglas, supposing the
 " deponent to be acquaint with Mrs. Hewit, desired that he should
 " converse with her, and endeavour to learn what she knew with re-
 " spect to the birth of the defender and his brother; for that the Dut-
 " chess said, that if they were truly the children of Lady Jane, she, the
 " Dutchess, intended to do something for the defender: and that this
 " happened, as the deponent thinks, within a few weeks of six months
 " before the Duke and Dutchess's separation. Depones, that on this
 " occasion, he did go to Mrs. Hewit, and told her, that he was desir-
 " ed by Mr. Hunter, as commissioned by the Dutchess of Douglas, to
 " enquire of Mrs. Hewit in the most serious and solemn manner what

“ she knew concerning the birth of these children ; and that, though
 “ he had no authority to put her upon oath, yet he hoped she would
 “ deal with him in the most candid and open manner, as she was
 “ then in a declining state of health, and the affair might be of
 “ great consequence ; and that her telling the whole truth in that
 “ matter, might not only affect her in this world, but might for e-
 “ ver affect her in the next : upon which Mrs. Hewit replied, *Mr. Har-*
 “ *per, you have been so long acquainted with me, that I hope you do not*
 “ *suspect my sincerity or integrity. I solemnly declare to you, that I was in*
 “ *the room by Lady Jane Douglas when she was delivered of these boys ;*
 “ *I was the first woman that ever touched them after they came from her ;*
 “ —and that she said, there were present at the birth, beside herself,
 “ a man-midwife, an elderly woman, and another young woman ;
 “ and that the deponent heard her often call the elderly woman
 “ Brown, or La Brun, in whose house she said they were staying at
 “ that time, and is not positive but she mentioned another woman’s
 “ having been present besides those above mentioned : that he does
 “ not remember that she mentioned the name of the man-mid-
 “ wife at this conversation, but has frequently heard her call him La
 “ Marre.”

To this parole proof of the actual delivery may be added the letters wrote at the time, which are conceived in a stile so natural and unaffected, that, to suppose them concerted, is utterly impossible.

The letters from Mrs. Hewit to the servant-maids have already been noticed, and one of them ingrossed by way of a specimen. If any person can believe, that it contains a fiction from beginning to end, he must at the same time be of opinion, that Mrs. Hewit was one of the most extraordinary geniuses that has at any time appeared. Sir John must also have had very singular talents for composition. His letter to Mrs. Hepburn, giving an account of the birth, of date 6th August 1748, is in these words : “ We are this day favoured with yours of the
 Ber. p. 31. “ 21st July. I would have wrote since my last of the 10th of July,
 “ but recollecting, that Lambino was to go to Spa, and from that to
 “ Holland, knew not how to direct for you ; so this must take its fate,
 “ to the care of the postmaster, though it contains the best news I
 “ ever gave you. Lady Jane was brought-to-bed of two boys, the e-
 “ vening of the last day I wrote to you ; but, as there is no joy in this
 “ life without some alloy, the one is so puny and weak, it scarce had
 “ life ; but, by the help of warm wine, a very good nurse, and coun-
 “ try-air, still lives, and may possibly do well. But, be that as God
 “ pleases, the other promises as well as ever child did, which she keeps
 under

“ under her eye, with a fine nurse, after changing three. Had he not
 “ been strong naturally, it was enough to have killed him; but far from
 “ it, he is whole and sturdy, sleeps and sucks without intermission, and
 “ *the angel herself* recovers to a wish; it is true, we are obliged to con-
 “ ceal the tenderness of the youngest, until she is quite well. Madam,
 “ here is more and better tidings than you deserve, since you do not think
 “ fit to give us a distinct way of addressing letters for you; I am glad to
 “ know my juniper-tea has done so well with my friend, and am studying
 “ to find a recipe to keep your head right too, upon receiving this letter;
 “ I have found it, Please remember, Mr. Hepburn, with many of your
 “ best friends, are far from home; there is a cooling drawback, I am
 “ afraid will more than answer. I am pleased you have Mr. Gordon
 “ of Couberdy with you; he is an honest and worthy gentleman, and
 “ ye will comfort one another. Lady Jane, and Mrs. Hewit join me in
 “ their compliments and best wishes to you and your agreeable family;
 “ make mine to Mr. Gordon, and believe me, Madam, notwithstand-
 “ ing of some jarrings, your sincere friend, &c.”

In his letter to Lord Crawford, of date 22d July, announcing the
 birth, he says, “ The kind concern you have on all occasions shewed in
 “ every thing concerns the welfare of that *meritorious lady*, makes it in-
 “ cumbent on me, by her orders to acquaint your lordship of her hap-
 “ py delivery the 10th instant of two boys, &c.”

If these letters were concerted with Lady Jane, the epithets of *angel*
 and *meritorious lady* must appear very astonishing, and it was no less
 artful in Sir John, to write to his son, the present, Sir John Stewart, of
 date 19th September, 1748, in these words, “ My dearest Lady Jane Pur. pr.
 “ brought me two boys at a birth, *when I would have compounded for* 1065.
 “ *one.*”

Thus your Lordships have the concurring testimonies of the father
 and mother, both in public and in private; the letters wrote by them
 at the time, and the deposition of a third party, who has twice affirm-
 ed, upon her solemn oath, that she was an eye witness to the actual
 delivery; a proof, which of itself is infinitely stronger than most per-
 sons, arrived at the age of eighteen, can boast of.

By various accidents, it has become impossible to obtain the evidence RECONVA-
 of La Brun and her family, or the man-midwife; so that the *direct* LESCENCE-
 proof of the circumstances attending the period of delivery becomes
 necessarily confined to the testimonies of the father, the mother,
 and Mrs. Hewit, joined to their letters at the time. But as the antece-
 dent condition of the mother has been proved by a variety of witnesses,
 so her subsequent appearance shall now also be stated, upon the direct
 and

and positive testimony of witnesses, who saw and observed her situation; and these different proofs of the antecedent and subsequent condition of Lady Jane being added to the direct evidence of an actual delivery on the 10th of July, and at the house of a La Brun, there cannot remain the least doubt of the fact, unless a great variety of persons have been guilty of the grossest falshood and perjury.

By the admission of the pursuers themselves, Lady Jane Douglas, though far advanced in her pregnancy, had no indisposition, either upon the road, or while in Godfroi's; and therefore, if it shall be made appear, that when she came to lodge at Michelle's, at an after-period, she had the appearance of a woman, not in a state of pregnancy, but recovering from child-bed, the consequence seems plain, that she must have been delivered subsequent to her leaving Godfroi's, and previous to her entry to Michelle's.—Of this alteration in her looks, after she came to Michelle's, and even at Dammartin, and after her return to Reims, the evidence is perfectly satisfying.

The conversation, already mentioned, between Sir John and Mrs. Napier in the year 1756, gave rise to a correspondence between that lady and Lady Frances Steuart, then living at Spa, in consequence of which Sir James Steuart, the husband of Lady Frances, wrote to Principal Gordon, of the Scots college at Paris, desiring him to make some enquiry into the particulars contained in Sir John's note, relative to the birth. Accordingly, a person called Tait was employed by Principal Gordon to make enquiry at Michelle's, which was then erroneously supposed to be the place of delivery. The result of it, as appears from Mr. Gordon's letter, was, that Lady Jane had not indeed been delivered in the hotel d'Anjou, "but that Madam Stewart *kept her bed*, after she came there, on account of her being *lately delivered*." So said Madame Michelle, when examined on that occasion; and the report then made is the more to be credited, as things were more recent than they are now.

Purf. pr. 4,
D.

Mrs. Michelle, examined for the pursuers in this cause, has said, That the lady, the wife of the gentleman, had a sickly air, and, before her departure, she looked better. She says also, That Dame Blainville, the woman who lodged in the house, told her at the time, "that either a physician or surgeon came to see the strangers." She further says, "That the lady showed very great sensibility and tenderness for the child, when the first nurse was dismissed, and that the deponent believed then, and does still believe her to be the real mother; and that she must have acted her part surprizingly if she was not *."

Purf. pr. 853,
H.

* " Et qu'il auroit fallu qu'elle eût joué un furieux rôle, si elle ne l'étoit pas.

" ther;

Michelle, the husband, deposes, "That the lady was white, very Purf. pr. 120,
 "pale, and had a sickly air, when she first arrived at the hotel; that E.
 "her head-dress was like that of a sick person." In the close of his
 oath, he says, "That his wife *told him at the time*, that the lady had 221 K.
 "the appearance of a woman recovering from sickness, without men-
 "tioning what sickness." And he further says, "That when the lady
 "left the hotel she appeared to be better, but still had a pale look, and
 "was very white."

Madame Blainville says, the lady was very pale and thin, and Purf. pr. 129,
 that she had the air of a woman *newly brought-to-bed*, or recovering A,—D.
 from some indisposition. She further says, that the lady wore a
 large handkerchief, *which covered her breast* up to her chin, and
 the windows of her room were kept shut, even when the servants
 were dressing it, which the people in the house said they were not sur-
 prized at, as the air was not good for a woman newly delivered: That 131, A.
 when she went out, she wore a long black furred cloak, and wrapped up
 so that one could not see her nose: That *she began to recover* while at
 Michelle's, especially after her child, the defender, had got a good
 nurse.

Breval, the son-in-law of Michelle, says, "That she was very thin, Purf. pr. 135,
 "delicate, and pale, like a woman *recovering from child-bed*, or some G.
 "severe indisposition, and that her neck was always covered." La
 Favre, the defender's nurse, gives much the same description of her,
 says she appeared *not to be in good health*; and adds, "That, while at Purf. pr. 141,
 "Paris, the lady had her drink always warmed for her in a silver I.
 "goblet, which was borrowed for that purpose from the traiteur,
 "but that, at Dammartin, she was better, and eat and drank like the
 "rest."

After having staid about a fortnight in Michelle's, it is in proof,
 that Lady Jane and her family left Paris, and resided about ten or
 twelve days at the village of Dammartin, in the neighbourhood of
 that city, and on the road to Reims; the reason of which could only
 be, that Lady Jane might pick up a little strength before proceeding
 on her journey. The precise day of her going to Dammartin does
 not appear, though from Mrs. Hewit's letter of 26th July, to
 the servant-maids, and sundry other passages in the evidence, it ap-
 pears pretty certainly to have been about the 3d or 4th of August.
 Madame Daux, at Dammartin, the only witness examined in that
 place, deposes, "That she had frequent opportunities of seeing Lady Def. pr. 593,
 "Jane at that place. Depones, that Madam Stewart appeared to her E.
 "about thirty-five years old, but that she might be more or less; that
 "she had a pale look; that she was of a good height; that her head-
 3. B. "dress

“ dress was round and flat, such as a person recovering health
 “ wears, which she had the appearance of. Depones, That it was
 “ always in the morning that she, the deponent, came to see Madam
 “ Stewart, for whom she executed commissions at Paris, in carrying
 “ backwards and forwards such things as the deponent was em-
 “ ployed to do by her. Depones, That all the times she came to
 “ see the said Madam Stewart, in the morning, about nine or ten o’
 “ clock, she found her got up, and very much covered about the
 “ neck and arms. Depones, that having seen Madam Stewart four
 “ or five days after her arrival at Dammartin, she seemed to her to
 “ have the appearance of a person recovering health ; that she took
 “ tea with milk, every morning the deponent saw her, and the depo-
 “ nent had sometimes the honour to breakfast with her. Depones,
 “ that she heard it said, that Madam Stewart came to Dammartin on
 “ account of the air, and knows, that, seven or eight days after, she,
 “ the deponent, had seen her, the said Madam Stewart appeared to be
 “ a little better.” Mangin, the nurse, swears, “ That Madam Stewart
 “ had a pale and delicate appearance, as a person recovering from
 “ sickness, but that she appeared better, and had a little more colour
 “ when she left Dammartin.”

Def. pr. 596,
C.

A variety of persons who saw her upon her return to Reims, and who had seen and observed the pregnancy before going to Paris, have been examined with regard to her after-appearance ; and they all agree, that she had precisely the looks and sickly air which were to be expected after in-lying. See Baron Mackelligot,—Miss Primrose,—General Maclean,—Madame Mayette, Mrs. Greig, all above stated.

Def. pr. 350,
D.

358, E.

364, C.

517, F.

First objection
to reconval-
escence.

To this proof of apparent recovery from child-bed, it was objected, imo, That some of the people in Michelle’s say, in general, that they thought Lady Jane’s breasts were flat as well as her belly, and it appears, that, when a bad nurse, who had no milk, was brought to the defender, a day or two after their entry to Michelle’s, Lady Jane was in distress, and did not offer to give any suck to the child, whereas she ought to have had milk in her breasts at that time.

Answer.

The period of coming to Michelle’s is now ascertained, and admitted to have been about the 19th or 20th. The child appears to have been brought to the house the day after they themselves came, *i. e.* on the 20th or 21st, by which time Lady Jane had been ten or eleven days delivered. It is well known, that if a mother does not give suck for ten or eleven days, it is for the most part impossible for her then to begin ; and supposing she had milk at that time in her breasts, it would be unsafe for the child to receive it ; the precise period of the milk leaving a wo-
 man’s

man's breasts, when she does not give suck, cannot be ascertained, because it is various, according to the different constitutions of women. A feverish disorder generally comes on about the 4th or 5th day, after which the milk goes away by degrees; sometimes it is entirely gone, and the breasts return to their ordinary size, in eight or ten days. At other times it goes off more gradually, and will be three or four weeks of being totally disordered; but it is certain, that the milk, which remains thus stagnating in the breasts for any number of days after the milk-fever, without the usual evacuation, becomes noxious to the child, and it would be highly improper to begin, at that period, to give suck, supposing the mother *could* give, or the child receive it.

The witnesses, who talk of Lady Jane's breasts being flat, do not bring their observations to any precise day; and, as Lady Jane's residence in Michelle's began only about the 10th day after the delivery, and continued a fortnight, it is hardly to be doubted, that her breasts would, in that time, be reduced to their ordinary size; at the same time they all agree, that she constantly wore a handkerchief which covered her whole neck and breasts, so that they cannot be supposed to have had the least access or opportunity to form a judgment of the real size of her breasts, though, in general, they might observe, that they were not very much out of proportion to the rest of her body.

To set up the evidence of these people, as contradictory to Mrs. Hepburn of Keith, and Isobel Walker, is extremely unjust. Mrs. Hepburn and Isobel Walker were well acquainted with her former appearance, had an opportunity of seeing her naked, and, from a comparison of her state at different periods, have deposed pointedly to the fact, that her breasts, during her pregnancy, were much beyond the ordinary size. The people at Michelle's knew nothing of her former state, nor were they in condition to judge of the real size of her breasts, because they did not see them uncovered.

2do, It was observed, that none of the family of Michelle remember any surgeon or accoucheur attending Lady Jane. Objection 2d.

This negative circumstance is of no avail; surgeons may have attended Lady Jane, though the Michelle people did not observe them, or though they do not *now remember* that they did observe them; Madame Michelle says, that Madame Blainville told her at the time, of a surgeon who visited Lady Jane, though Blainville herself does not now recollect that circumstance. Answer.

3tio, It was said, that the very day after their arrival at Michelle's, Lady Jane, Sir John, and Mrs. Hewit, appear to have gone out all three in a coach, in order to bring home the defender, whom they said they had at nurse, towards St. Germain, and to have returned the same Objection 3d.

same night; and that after having been some days longer in the house, they made a second jaunt to Versailles, where Lady Jane walked about in the gardens; and that all this was inconsistent with her supposed condition, as newly delivered.

Answer.

The account given of the first journey is clearly a mistake, and is indeed inconsistent with the story which the pursuers themselves now tell, as will be explained when the enlevement of Mignon's child comes to be treated of. The fact appears from Sir John Stewart's declaration, and Mrs. Hewit's deposition, to have been no other than this, that a nurse, or milk-woman, having been got for the defender, who lived in Paris, or the suburbs, she was allowed to take home the child to her own house, for a day or two, when it became necessary to remove Lady Jane to Michelle's; and, as soon as they were settled there, Sir John went in a coach to see the child, but having taken a dislike at the nurse, whom he says he found drunk, he sent the coach for Mrs. Hewit, in order to bring the child home to Michelle's. He at the same time procured another nurse, who was dismissed soon after, because she wanted milk, and the nurse Favre was got in her place. The circumstance of Sir John and Mrs. Hewit's having gone for the child, and bringing it with them in a coach, and one of the nurses having come from St. Germain-en-Laye, has occasioned a confusion in the ideas of the Michelle people, and led them to believe, at this distance of time, that the three strangers had made a journey to St. Germain-en-Laye for the child.

Purs. pr. 4, E.

From Principal Gordon's letter it appears, that, when interrogated, in 1756, they all agreed that Lady Jane had kept her bed for some time after her coming to the hotel, as a woman newly delivered; and they have even said, in their depositions in this cause, that Lady Jane was in a sickly way, and had the appearance of a woman newly delivered; so that it is by no means probable that she would go out the very day after coming to the house. She either was, or pretended to be, the mother of a new-born child, and she had understanding enough to act consistently. From the deposition of the nurse Favre it appears, that she never heard of Lady Jane's going out all the time she was in Michelle's, and that she never came to see the child while in her house, notwithstanding the remarkable anxiety she at all times discovered for him, both at Michelle's and afterwards.

In like manner, the other story of a jaunt to Versailles, which depends on the evidence of Blainville, (a Tournelle witness) is by no means probable. In the first place, it is contradicted by Mrs. Hewit, who does not remember any such jaunt. 2do, The pursuers have insisted much upon the supposed *concealment* of Lady Jane during her residence in Paris; and indeed it is very plain, that if she was at this time pretending a delivery, it was more necessary for her to be closely confined,

finer, and to avoid every opportunity of being seen in publick, than if she was really in child-bed.—It is therefore extremely improbable that she should have jaunted about in this publick manner, and thereby run the most imminent risk of being detected; more especially if she had by that time perpetrated the crime laid to her charge, of stealing away a child from an inhabitant of Paris, 3to, It is totally incredible that Lady Jane should have made a companion of a common servant-woman, such as Blainville. 4to, This witness seems not to be accurate in her recollection of past circumstances, for she is contradicted by the family of Michelle, and by the nurse Favre, in a variety of particulars.—She says, Sir John and Lady Jane were eight days in Michelle's before the child was brought to the house; Michelle's family all swear he was brought next day.—She says, that Lady Jane^{Purf. pr. 866, G.} visited the child in Favre's house, and had conversations with the nurse about the manner of treating the child.—The nurse herself and^{—883, A.} her husband, deny any such visit, and say, they never heard of Lady Jane's coming out of the house while at Michelle's.—She says, no person visited Sir John and Lady Jane during their stay in Michelle's.—Madame Favre swears that a gentleman did visit them^{Purf. pr. 881, H.} there; and Madame Michelle has deposed, that Blainville herself told^{—852, A.} her at the time, that a physician or surgeon came to visit them.—Lastly, She appears to be in a mistake in a very capital fact with regard to this journey to Versailles, and which indeed throws a suspicion upon the whole; she says, that having been engaged to enter to the service of Madame Goury, about the time that she was asked to go on this jaunt, she was obliged to obtain Madame Goury's leave of absence; and that accordingly, Madame Goury having allowed her eight days, she went to Versailles along with the strangers, and, the day after, went with them to see the publick places of Paris; the next day after which, she entered home to Madame Goury's.—From Madame Goury's declaration it appears, that this lady does not believe she ever gave such permission, or that it was asked by Blainville; and, from a certificate taken from her book, it appears, that Blainville entered home to her service the 29th July, which was the very day, or at farthest, the day after she had been engaged to enter.—Her declaration is in these words:

“ I do hereby certify, that Madame Blainville entered to my service, in quality of chamber-maid, the 29th July 1748, and that she^{Def. pr. 720} left my service the 8th of August 1757, conform to my household-book, which I have kept, and in which I wrote down the dates mentioned in this certificate. I do further declare, that she entered home to my service the day, or the day after, I engaged her; and I do not

“ believe that she asked from me some days delay, after being engaged, before she entered to my service.”

The witness therefore appears to labour under some deception as to this journey, which cannot, at this distance of time, be explained. At the same time, as from her own account of the matter, compared with Madame Goury's certificate, the jaunt, if at all performed, must have happened upon the 27th July, which was *seventeen days* after the delivery; and, as Lady Jane appears to have been advised to go to the country for fresh air, as soon as she was able to stir out, it is by no means an impossible case, that she may have gone out in a coach for a few miles, by way of trial.

It will be remarked that Madame Blainville, as well as the whole family of Michelle, understood Lady Jane to be recently delivered, and entertained no doubt of her being really the mother of the infant, which they saw in her possession; nay, to this day, they are perfectly satisfied, that she was really the mother; and therefore, if it be true, that she made any jaunt to Versailles, or to any other place, they must have been satisfied at the time, that her doing so was no way inconsistent with the situation in which they supposed her to be, and Mrs. Hewit's *non memini*, with regard to it, must be innocent, though the memorialist does still say, that there is no evidence nor probability of any such jaunt having been made.

Objection 4. 4to, It was objected, that Lady Jane had naturally a pale and delicate complexion.

Answer. The natural delicacy of Lady Jane's complexion, will by no means account for her appearance at Michelle's, at Dammartin, or at Reims, after the delivery. The witnesses who depone to her having naturally a palish complexion, say, at the same time, “ That she had not a “ sickly or unhealthy appearance,” so it is said by Lord Morton, Lord Cathcart, and others; whereas the Michelle people, the nurse Favre, the nurse Mangin, and others, who saw her immediately after the delivery, give her a very sickly appearance, and say, that she had all the air of a woman beginning to recover from child-bed, or a severe indisposition. The pursuers have been at pains to show, that she had all the appearance of good health down to her arrival at Paris. Madame Vatry even says, that she had *red in her cheek*, the pursuers maintain that she had no indisposition at Godfroi's; she is proved to have had all the appearance of great weakness and indisposition at Michelle's, in so much, that the people there, neither *then* had, nor *now* have, the smallest doubt, that she was recently delivered. They all concur in saying, that she had a *gradual* appearance of recovery, during her short stay in that house, and she continued to grow better at Dammartin, but an alteration in her looks was still visible at Reims.

All

Purs. pr. 85,
D.

Purs pr. 169,
F.

All the people who knew her, and who were acquainted with her former complexion, were sensible of the alteration.—How then can there be the least doubt of the fact? and how can the pursuers account for this sudden alteration, from the time of her leaving Godfroi's to the time of her appearance in Michelle's, without supposing her to have been delivered in that interval? The care she appears to have taken to muffle herself up, to keep the windows shut, and to use warm drink, &c. in the hottest season of the year, when she could not at the same time endure to lie in her bed for heat; and, indeed, the very circumstance of her remaining a fortnight at Dammartin, before proceeding on her journey to Reims, must put it beyond doubt, that something had happened to her, which made these precautions necessary; and, unless the pursuers can show, that she miscarried, or was delivered of a dead child or children, there remains no other supposition, but that she was delivered of the defender and his twin-brother.

When the pursuers originally ventured this plea, it is believed they depended entirely on one *positive* circumstance, and three *negative* ones. The positive circumstance was, an *alibi* on the day of the delivery, said to be proved in the most direct manner, by the books, and by the evidence of the family of Michelle. This *direct* article, the memorialist will have occasion to consider, and fully to explain, when he enters upon the pursuers proof. The three *negative* circumstances were, 1mo, The want of the accoucheur.—2do, No La Brun to be found.—3tio, No discovery made of Sholto's nurse, or the village where she lived.—In these three particulars, it was thought the account given by Sir John, Lady Jane, and Mrs. Hewit, of the circumstances of the birth, was unsupported by any other evidence. The memorialist does, with submission, apprehend, that supposing matters had continued to this day on the same footing, and that no other evidence whatever had appeared with regard to La Marr, La Brun, or the nurse of Sholto, than what has already been stated, these negative circumstances, arising only from the difficulty of tracing persons unknown, in a foreign country, and at such a distance of time, would not, in any degree, have tended to overthrow, or affect the positive testimony of his birth. The labour and hardship of prosecuting such enquiries, must always, in the like circumstances, be great. In the present case, advantages were taken, and operations carried on against the memorialist in France, which rendered every enquiry, on his part, both difficult and hazardous. At the same time he has been able, even at this distance of time, and under those disadvantages, to trace some remarkable circumstances, corroborative of his birth, in the three articles
above

CIRCUM-
STANTIAL
EVIDENCE
CORROBO-
RATIVE
OF THE
BIRTH.

above mentioned, and these he shall now proceed to state to your Lordships, though he does by no means apprehend, that they were in any degree necessary to protect him in the present action.

LA MARR.

The pursuers, at the time of raising their action, and for some time after, asserted, in very confident terms, that no surgeon, or accoucheur, of the name of Pierre La Marr, had existed in Paris in the year 1748. In what manner, or by what evidence, this negative circumstance was to have been ascertained, the memorialist does not readily perceive, nor does he think it would have affected the truth of his birth, though, at the distance of so many years, the pursuers had been unable to trace the person who delivered Lady Jane. Accidentally, however, it was discovered, by those acting for the memorialist, some time after the Dutcheſs of Douglas had gone to France, that a Pierre La Marr, a surgeon, and practiser in midwifery, did exist in Paris in the year 1748; that he delivered a foreign lady of twins, in that very period; and that this fact was well known to the agents for the pursuers.

Def. pr. 541,
C.

Mr. Bordeu, a physician of character in Paris, deposes, " That he
" was physician to the Dutcheſs of Douglas about two years and a
" half ago; that she appeared to the deponent newly arrived at Paris,
" and that she lived in the street de Condé, in the hotel de Provence.
" Depones, that he was at the same time physician to the Prince of
" Turenne. Depones, that he spoke at that time to the Prince of
" Turenne, of the Dutcheſs of Douglas her arrival at Paris, and
" told said Prince, that she was come on account of an affair relative
" to the birth-right of Mr. Douglas; upon which the Prince cried
" out, " That is singular, Menager, my surgeon, spoke to us of this
" affair," but the deponent does not recollect if the Prince said that it
" was the same day, or the day before, or some days before, that Mr.
" Menager had spoke to him of it: That after this conversation, the
" deponent mentioned what the Prince of Turenne had told him, to
" Madame Webb, at her house, to Father Cruckſhanks, formerly
" Jesuit, at his house, being unwell, and attended by the deponent,
" in presence of Mr. Murray, in whose house the said Father Cruck-
" ſhanks lived, and at the Dutcheſs of Douglas's to a young lady,
" who was with her, and who served him as interpreter, understand-
" ing the French, to a gentleman with a sword, a black coat, and his
" own hair, who appeared to the deponent to be a man of business,
" and a stranger, but who spoke French; the deponent does not re-
" member to which of the above named persons he spoke first of it;
" recollects himself to have spoke of it sundry times in the Dutcheſs
" of Douglas's; and he believes, the last conversation was in Father
" Cruckſhanks's. Depones, that in the first conversation with the
" Dutcheſs

“ Dutcheſs of Douglas, the deponent mentioned, hiſtorically, what he
 “ had heard in the Prince of Turenne’s; does not recollect, as he
 “ has already ſaid, in what it conſiſted; but believes, that it was fa-
 “ vourable to Mr. Douglas, as they took a note of the profeſſion of
 “ Mr. Menager, who, the deponent ſaid, was ſurgeon to the Prince
 “ of Turenne, without being able to tell where he lived, which the
 “ deponent is yet ignorant of; upon which it happened, that next
 “ day, or the day after this converſation with the Dutcheſs of Dou-
 “ glas, the gentleman above mentioned, who was dreſſed in black,
 “ obſerved to the deponent, with ſurpriſe and heat, that it appeared the
 “ deponent had impoſed upon him, as the Prince of Turenne had no
 “ ſurgeon called Menager, which he pretended to prove, ſaying, that,
 “ having gone to inform himſelf at the hotel de Bouillon, he was an-
 “ ſwered, that the ſurgeon of the houſe was not called Menager; to
 “ which the deponent answered, that it was very true that the ſur-
 “ geon of the hotel de Bouillon was not called Menager, but that the
 “ Prince of Turenne had another ſurgeon, than that of his father the
 “ Duke of Bouillon, and that the ſurgeon of the Prince of Turenne
 “ was Menager; and that the converſation with the Prince of Tu-
 “ renne, of which the deponent had ſpoke, was not held at the hotel
 “ de Bouillon, but in a country-houſe near Paris, belonging to the
 “ Prince of Turenne; and that it was there he behaved to go to in-
 “ form himſelf of Menager. Depones, that at the firſt converſation
 “ at the Dutcheſs of Douglas’s, the ſaid young lady, who was with
 “ the Dutcheſs of Douglas, appeared very much moved at the depo-
 “ nent’s recital; and that even this emotion appeared general in the
 “ family of the Dutcheſs of Douglas, who gave to the deponent a
 “ printed memorial in Engliſh upon this affair: That, at the ſecond
 “ converſation, they appeared very angry at the deponent, who, they
 “ believed, had impoſed upon them.”

Here, your Lordſhips will obſerve, that Mr. Menager, a ſurgeon of
 note in Paris, was for the firſt time pointed out to the defender’s
 friends, as a perſon who knew ſomething of Lady Jane Douglas’s de-
 livery; and, it was not till after repeated enquiries at Mr. Bordau,
 and at the hotel de Buillon, that Mr. Menager was at laſt diſcovered,
 and interrogated on the ſubject. Mr. Menager related the ſame facts,
 which he has ſince done upon oath; and he further ſaid, that ſome
 months previous to that time, he, and another ſurgeon, called Mr. Giles,
 who likewiſe knew the ſame facts, had converſed with Mr. Andrew
 Stuart concerning them, and had dined with him in a publick-houſe
 upon the occaſion.

Mr. Menager has, for a number of years, been in great practice as
 a ſurgeon, and is a gentleman of undoubted good character. He was

Def. pr. 526,
D.

adduced in the cause as a witness for the defender, and his deposition is in these words : “ Depones, “ That when he became first acquainted
“ with Mr. Pierre de La Marre, surgeon at Paris, he was only seven-
“ teen years and a half old, and he practised surgery with him at the
“ Hotel-dieu at Paris, for the space of twelve years, and from that time,
“ till about the time of the said Mr. de La Marre’s death, he was always
“ connected with him. Depones, that he remembers, that the said Mr.
“ de La Marre told the deponent, likewise to Mr. Giles, surgeon, and,
“ as he believes, to Monsieur Melé, likewise surgeon, that he had been
“ acquainted before-hand of a stranger lady, who was coming to Pa-
“ ris to lie-in, and that this delivery might be very advantageous to
“ him, the said Pierre de La Marre, and that he would be very glad,
“ that the deponent himself assisted at this delivery, which might
“ be dangerous, on account of the lady’s advanced age ; that the
“ deponent was not present at the delivery, but that M. de La Marre
“ afterwards told him, that the lady was delivered of two male-
“ twins, and that he La Marre had been man-midwife ; and that
“ it may be about sixteen or seventeen years since this happened, the de-
“ ponent not remembering precisely. Depones, he thinks he recollects it
“ was towards the end of the spring, or in the months of June or July,
“ so far as he can remember. Adds, That M. de La Marre spoke to him
“ of this affair, as being something extraordinary, on account of the ad-
“ vanced age of the person. Depones, that M. de La Marre did not tell
“ the deponent, from what country the lady came, but only that she
“ came from afar, and from beyond sea, and last, from Reims. De-
“ pones, that M. de La Marre did not tell the deponent precisely in
“ what place, or in whose house the lady was delivered, because he was
“ piqued, on account of the deponent’s not being present at the deli-
“ very, but that the said M. de La Marre had several lying-in houses
“ (*depots*) where he brought women to-bed ; that he had some places
“ of this kind near the Hotel-dieu, in the quarter of St. André des arts.
“ and in the quarter of St. Honoré ; and the deponent suspects this
“ delivery may have happened in the quarter of St. André des arts, be-
“ cause he saw M. de La Marre sundry times turn to that side, in tak-
“ ing the street de l’Epron, which leads into the street de Paon. De-
“ pones, that M. de La Marre was connected with a Madame La Brun ;
“ that the deponent hath frequently himself seen this Madame La
“ Brun at the Hotel-dieu, where she came to see M. de La Marre ;
“ and that, as she saw the said M. de La Marre, to whom she
“ spoke in secret, the deponent concluded from thence, that she
“ might have one of these lying-in houses, where M. de La Marre
“ brought women to-bed ; the said M. de La Marre having no privi-
“ lege at that time to exercise his profession ; and being obliged to have
“ several houses of that kind. Adds, that these lying-in houses were not

“ of

“ of the ordinary kind of furnished chambers (*n'étoient pas des hôtels*
 “ *garnies*) but that this did not hinder M. de La Marre from bringing
 “ women to-bed in other places, and that such houses might have been
 “ necessary for him, even though he had had a privilege. Depones,
 “ that he never was in Madame La Brun's house, nor knew where she
 “ lived, nor if she was a widow, but knows she had a daughter,
 “ whom the deponent hath seen frequently, and called her *La petite*,
 “ not knowing her name. Depones, that this girl might have been at
 “ that time, viz. 16 or 17 years ago, about 18 or 19 years of age. De-
 “ pones, that M. de la Marre told the deponent, that one of the chil-
 “ dren of that stranger lady had been intrusted to his care; that he
 “ put the child out to nurse in the neighbourhood of Paris, towards
 “ Belleville or Menilmontain, and that he expected it would turn out
 “ greatly to his advantage. Adds, that the said M. de La Marre had
 “ the care of several other children, and paid those who kept them;
 “ but he spoke to him more particularly of the stranger lady's child.
 “ Depones, that M. de La Marre spoke of this lady, whom he had
 “ delivered, as a lady of great family, without mentioning the name,
 “ and that he expected great advantage from it. Depones, that he
 “ knew M. de La Marre was much employed in delivering women,
 “ seeing he had practised a very long time in the ward for lying-in
 “ women at the Hotel-dieu, and even before he entered there, he had prac-
 “ tised in that branch with Monsieur Mengond, master-surgeon at Pa-
 “ ris, living in St. Thomas street du Louvre. Depones, that the said
 “ M. de La Marre told him, that one of the twins was delicate, and
 “ probably it was the one who remained at Paris, and was entrusted
 “ to his care. Depones, that he has not seen Madame La Brun, nor
 “ her daughter, nor heard them spoke of these 12 or 14 years past, see-
 “ ing he has not been in use since that time to go at all to the Hotel-
 “ dieu. Depones, that the first person he saw, on account of this af-
 “ fair, was Mr. Stuart, now present, about two years ago; that Mr.
 “ Stuart asked him nothing else than to tell him the truth, without
 “ saying for whom he interested himself, and accordingly the deponent
 “ could not have discovered it from that conversation, and that the de-
 “ ponent related to him what he hath deponed above, and this passed
 “ in presence of Monsieur Giles, master-surgeon at Paris. Adds, that
 “ Monsieur Giles told Mr. Stuart the same thing, and that this first
 “ conversation happened at St. Come, under the portico of the acade-
 “ my. Depones, that, in three or four days afterwards, he had a se-
 “ cond conversation with the said Mr. Stuart, also in presence of Mr.
 “ Giles, when the deponent did not discover then, more than formerly,
 “ for whom Mr. Stuart interested himself; and the deponent and Mr.
 “ Giles repeated to him, on this occasion, the same things they had told
 “ him in the first conversation. Depones, that, after this, the deponent
 “ having

“ having been at the Prince of Turenne’s, where they were reading
 “ the romance of Hyppolite Count de Douglas, the deponent recount-
 “ ed what he knew of this affair; that a person, the day thereafter,
 “ having spoke to the Prince of Turenne of the Dutcheſs of Douglas,
 “ and the occaſion of her being at Paris; this Prince answered, That
 “ there was no perſon able to give better information about that affair
 “ than his ſurgeon, meaning the deponent, which having been told
 “ again to the Dutcheſs of Douglas, ſhe ſent for the deponent, and by
 “ this means it was, he became acquainted with the ſaid Dutcheſs of
 “ Douglas, and the defender’s council, to whom he recounted the ſame
 “ hiſtory. Depones, that the ſurgeons are bound to conceal ſuch deli-
 “ veries as are made by them in ſecret, and where the perſons do not
 “ want to be known, but that does not hinder them from ſpeaking of
 “ them to their particular friends, for the purpoſe of taking their advice,
 “ or for other reaſons; that the ſurgeons who are not privileged have
 “ an additional motive to conceal the deliveries they make, becauſe
 Def. pr. 529, “ otherways they might meet with trouble from the police.—Depones,
 B. “ that M. de La Marre taught the art of midwifery to pupils of all na-
 “ tions, particularly to Engliſh and Iriſh. Depones, that there was
 “ at that time three or four pupils in ſurgery who came to the Hotel-
 “ dieu, and were either Iriſh, Scots, or Engliſh, and were called *Abbés*.--
 I-D. “ Depones, that it was the day, or the day after the delivery, that M.
 “ de La Marre told the deponent, that the lady was brought-to-bed; that
 “ he was very angry that the deponent was not preſent at it; that he
 “ had ſent to ſeek him; that happily the work had been attended with
 “ all poſſible ſucceſs, although the lady was advanced in years, and
 “ that it was her firſt delivery; does not remember that M. de La Marre
 “ told him how long the lady remained at Paris after her lying-in. De-
 “ pones, that, from the manner in which M. de La Marre ſpoke, the
 “ lady was about forty-eight years old, though he did not tell him her
 “ age preciſely. Depones, that, at that time, M. de La Marre had ſe-
 “ veral children entruſted to his care, which he put out to nurſe in the
 “ neighbourhood of Belleville, Monilmontain, and other villages. De-
 “ pones, that he does not recollect that M. de La Marre told him, that
 “ ſecrecy had been recommended with reſpect to this delivery, and
 “ with reſpect to the place where the child had been put. Depones,
 “ he does not remember, that M. de La Marre told him for how ma-
 “ ny months he paid the nurſe’s fee, nor at what time the child was
 “ taken away, nor to whom he gave it; but remembers only, that
 “ M. de La Marre told him that he had no longer his penſioner, and
 “ that he always expected great advantages from it. Depones, that M.
 “ de La Marre never told him what fees he received for this delivery,
 “ but he appeared ſatiſfied with what he had got, in the hopes of get-
 “ ting more afterwards. Depones, that M. de La Marre did not tell him
 “ in

" in whose house the Lady was brought-to-bed, but believes only, as
 " he has said already, that it was in the quarter of St. André des arts.
 " Depones, he does not know if Madame La Brun kept furnished
 " lodgings, having never been in her house, but only suspected she
 " was one of M. de la Marre's nurses for sick people. Depones, that
 " he was acquainted with Madame La Brun's daughter, as he has
 " already said, but knows not if she had any other children. De-
 " pones, that he never saw Madame La Brun's daughter in her mo-
 " ther's house, but has seen her in other houses of M. de La Marre's
 " acquaintance, and more particularly of the deponent's acquaint-
 " tance, and remembers the names of the persons with whom, and
 " houses where, he has seen her, but does not think he ought to mention
 " them. Depones, he has seen the girl La Brun in another girl's
 " house, called Mademoiselle Collette, St. Honore-street, near to the
 " Croix de Trahoir, in a house where an apothecary now lives, which
 " girl Collette, the deponent knows, is gone to the islands. Declares,
 " he does not remember the names of any other person, in whose
 " house he has seen the said girl La Brun. Depones, that he hath
 " seen the said girl La Brun in the said girl Collette's house, both be-
 " fore and after the Lady's delivery above mentioned. Depones, that
 " he does not recollect that he knew any person, except M. de La
 " Marre, who was connected with Madame La Brun, or that was ac-
 " quainted with her, or with her daughter. Depones, he does not
 " recollect to have heard mention made of any person who was
 " brought-to-bed in Madame La Brun's house. Depones, he does not
 " know whether it was before or after M. de La Marre's marriage,
 " that he told the deponent of the above mentioned delivery, or of
 " the child that was entrusted to his care, because he knows not the
 " time of M. de La Marre's marriage, neither does he know whether
 " or not he travelled, but never observed him so long absent, as to
 " think he could have made any long journies. Depones, that he be-
 " lieves M. de La Marre was surgeon-major to the regiment De la
 " Couronne, and that when he was named to it he was at the Hotel-
 " dieu, but does not believe he ever set out to join the regiment. De-
 " pones, he was acquainted with a brother of M. de La Marre's, who
 " was likewise a surgeon, and much younger than him, and whom
 " M. de La Marre did not see much. Depones, he has heard it said,
 " that Madame La Brun lived in Poupee street, or Serpente street, but
 " does not believe that it was at the time of the delivery, spoke of
 " above, because La Marre never told him where the said Madame La
 " Brun lived. Depones, he does not remember to have ever said, but
 " only that he has heard it said, that the said Madame La Brun and
 " her daughter had retired into Brittany; that he believes he heard so
 " from Mr. Stuart, or from an inspector of the police, but cannot be
 " positive,

Def. pr. 531, C. "positive, only he never was told so by any person on the part of
 " Mr. Douglas.—Depones, that he never was employed on the part
 " Mr. Douglas, to make any search or enquiries relative to this
 " affair, that it was never proposed to him, and if it had, he would
 " not have undertaken it. Depones, that he served two years in the
 " army, and was at that time surgeon to the Count d'Argenson, but
 " does not remember in what years: that he hath lived continually at
 " Paris since his return from the army, except when he accompanied
 " M. de Maillebois into Provence, at the time of the Princess of Spain's
 —F. " marriage with the Duke of Savoy.—Depones, that La Marre ne-
 " ver told him upon whose recommendation he had been employed in
 " this delivery. Depones, that it was in order to have help, in case
 " of any accident, that M. de La Marre spoke to the deponent of the
 532. C. " delivery in question.—Depones, that he assisted M. de La Marre in
 " several deliveries, one time, among others, of a Lady from Provence,
 " who had come secretly to Paris:—that M. de La Marre was a man
 " of good character, very sociable, but given to wine, and died from
 " drinking too much. Depones, in explaining himself with regard to
 " the persons he has seen in company with the girl La Brun, and whom
 " he thought it improper to name, that he meant the girl Collette,
 " whom he afterwards named, and Mr. Barrier, son to the King's
 " engraver, who is at present exempt of the Marichausse, towards
 " Soisons."

The circumstances deposed to by this witness are very striking.—
 He was re-examined by the pursuers. Numberless cross-questions were
 put to him, with a view of leading him into contradictions, but in this
 they were unsuccessful; the facts told by him are consistent and pro-
 bable in every article.—He depones, " That he remembers to have
 Purf. pr 956, G. " been in a house kept by Pierre La Marre, for delivering women,
 " which was in one of the little streets, the deponent does not know
 957, C. " which, in the quarter of the city near Notre Dame.—Depones, that
 " he knows that M. de La Marre had houses for delivery in the quar-
 " ter de St. André des arts, and in the rue St. Honore, and near the
 " Hotel-dieu, because M. de La Marre said so to the deponent, and he
 " does not know it otherwise. Depones, that the house for delivery,
 " in which the deponent has been, was in the second or third storey;
 " and the deponent does not know who were the persons that had the
 " charge of that house for delivery, but that it was sometimes a sick-
 " nurse, and sometimes another woman. Depones, that a *depot d'ac-*
 " *couchement* is a place where one sends a woman to be delivered.
 " Depones, that these houses for delivery are not only for secret de-
 " liveries, but also for others. Depones, that the deponent never heard
 " of any woman of condition who was delivered in one of those houses
 " for delivery, except a lady from one of the provinces, of whose de-
 " livery, which was a secret one, the deponent has spoke in his former
 " deposition,

“ deposition, and of that of a lady from beyond sea, of which the
 “ deponent has also spoke in his former deposition, and which he sus-
 “ pected to have happened in some one of the houses for delivery kept
 “ by M. La Marre, in the quarter of St. André des arts. Depones,
 “ That these houses for delivery are not generally kept in furnished
 “ lodgings, but that they are kept in the houses of sick-nurses, to
 “ whom the furniture belongs; and with regard to the house for de-
 “ livery above mentioned, it was furnished and hired by Pierre La
 “ Marre himself.—Depones, That he has seen M. La Marre and Ma-
 “ dame La Brun speak together in the Hotel-dieu, and in the street,
 “ but he never saw them together in any private house. Depones,
 “ That the deponent became acquainted with Mademoiselle La Brun,
 “ on occasion of the visits which Madame La Brun made to M. La
 “ Marre at the Hotel-dieu, with the said Mademoiselle La Brun, who,
 “ Pierre La Marre told the deponent, was the daughter of Madame La
 “ Brun, and that thereafter he saw her in the house of Mademoiselle
 “ Collette, mentioned in his former deposition, and that the deponent
 “ and the said Mademoiselle La Brun have supped together in taverns.
 “ —Depones, That the deponent left the Hotel-dieu in the beginning
 “ of summer 1746. Depones, That the deponent did not go to the
 “ army in the year 1746, but that he remembers, since his former
 “ deposition, that he went thither for the first and only time, in the
 “ year 1747, and that it was in quality of a surgeon-aid-major, of
 “ which he received the letter of commission, or *brevet*, at Brussels,
 “ where the army was. Depones, That when these commissions are
 “ given at Paris, they are signed by the minister, and that, when they
 “ are given at the army, they are signed by the intendant of the ar-
 “ my; and that the deponent’s letters of commission being given at
 “ the army, they were signed by Monsieur de Sechelles, then intendant
 “ of the army. Depones, That these commissions are only given for one
 “ single campaign. Depones, That the deponent being at the army
 “ in the year 1747, Monsieur Bagieu, surgeon of the light horse of
 “ the guard, being employed by Monsieur le Comte d’Argenson, to
 “ find a surgeon for him, presented the deponent to Monsieur d’Argen-
 “ son for his surgeon, and the deponent attended him in that quality
 “ in that campaign of 1747, and he returned with that minister when
 “ the King returned from the army; and the deponent remained at
 “ Paris attached to Monsieur d’Argenson during the whole year 1748.
 “ Depones, That as Monsieur d’Argenson did not make the campaign
 “ of 1748, the deponent did not make it either; that, however, the
 “ deponent received from Monsieur d’Argenson, then minister of war,
 “ a new commission of surgeon-aid-major, of the army for the said
 “ campaign 1748: That, in consequence of this *brevet*, the deponent
 “ received

Purf. pr. 958.
C.

—959, 1.

Parf. pr. 960
H.

969, D.

Parf. pr. 970,
D.

“ received the appointments for the whole campaign, and that he re-
 “ ceived these appointments from one Monsieur Marchand, then de-
 “ puty in the war-office for the hospitals, and since deceased ; and
 “ that it was at Paris that he received these appointments, and gave a
 “ discharge for them at the war-office, which was then kept in the
 “ rue Montmartre, and that the deponent did not leave Paris in the
 “ forefaid year 1748, except to go to Versailles.—Depones, That the
 “ deponent had no *cong  * for the year 1748, but that, notwithstanding
 “ thereof, he was considered as present, and that many others were in
 “ the same situation.—Depones, That the delivery of the lady from
 “ beyond sea, in question, happened after the deponent’s return from
 “ the army, which return was, as he has already said, in the year
 “ 1747: That, otherwise, the deponent would not have had know-
 “ ledge of it, that is to say, that if the delivery had happened while
 “ the deponent was at the army, Monsieur La Marre could not have
 “ spoke to him of it in the time. Depones, That La Marre spoke to
 “ the deponent of this delivery, as having already happened before the
 “ deponent made the journey, of which he has spoke in his former de-
 “ position, with Monsieur de Maillebois, at the time of the marriage
 “ of the Princess of Spain, who went to marry the son of the Duke of
 “ Savoy, which the deponent believes happened in the year 1750.
 “ Depones, That at the time of the first conversation which the depo-
 “ nent and Monsieur Giles had with Mr. Stuart, here present, on the
 “ subject of this delivery, of which mention is made in the deponent’s
 “ former deposition, it was Monsieur Giles who first mentioned the
 “ circumstance of twins to Mr. Stuart: That the deponent does not re-
 “ member, if, in this conversation, the said Monsieur Giles mention-
 “ ed, that the said lady, from beyond the sea, was delivered in the
 “ house of Madame La Brun: That the deponent believes, that the
 “ said Monsieur Giles did also say, in this conversation, that the said
 “ lady had come from Reims. Depones, That since this conversation,
 “ and another conversation which the deponent and Monsieur Giles
 “ had with Mr. Stuart on the same subject, which is also mentioned in
 “ the former deposition, the deponent has not spoke to Monsieur Giles
 “ on the subject of this affair. Depones, That Monsieur Giles has
 “ told the deponent, that he (Giles) was the surgeon of Monsieur Bu-
 “ hot, inspecteur de police, and the accoucheur of his wife.—Depones,
 “ That the deponent never was employed in the family of the Dutches-
 “ of Douglas till after his first deposition. Interrogated for the pur-
 “ suers, depones, That in the two conversations which the deponent
 “ had with Mr. Giles and Mr. Stuart, as aforesaid, Monsieur Giles
 “ said, that it was at the Hotel-dieu that he heard La Marre speak of
 “ the said delivery. Depones, That, in these conversations, copies of
 “ letters

“ letters were shown to the deponent, said to be wrote by Pierre La Marre, in which mention was made of a journey to Italy. And the deponent being asked, If Pierre La Marre had actually made any journey to Italy? the deponent answered, that he did not believe it, because Pierre La Marre had not been so long absent from Paris.”

Thus it appears, that Mr. Menager was intimately acquainted with Pierre de La Marre, surgeon in Paris. La Marre told him that he was to deliver a *stranger* lady, of an *advanced age*, who was coming to Paris to lie-in; he afterwards told him, that he had delivered this lady of *male-twins*, that she came last from *Reims*; and that this event happened *sixteen or seventeen years* before his examination, which was on the 6th November 1764. This brings it either to 1747 or 1748, and he thinks it was either the end of spring, or in the months of June or July. In his after-deposition, he explains, that in the 1747 he was along with the army as an assistant to the surgeon-major, but that he remained in Paris in the 1748, along with the household of Mr. d'Argenson, secretary at war, though properly belonging to the army, that year also; so that his conversations with La Marre, concerning the delivery of the stranger lady, must have been in 1748. He further expressly says, that La Marre was acquainted with a *Dame La Brun*, whom the witness has seen, and whose *daughter* he was acquainted with, and that she probably kept one of those private *depots*, or houses for lying-in women, which the surgeons or accoucheurs in Paris frequently make use of.—La Marre further told him, that he had *one of the twins*, who was *delicate*, entrusted to his care, and which he had put out to nurse; that the Lady was of *great quality*; that it was her *first delivery*; and, that he expected advantage by this delivery. Lastly, the witness expressly says, that La Marre was much employed as an *accoucheur*, though not privileged.

La Marre himself died in 1753, so that his evidence could not be obtained in this cause. But nothing can apply more directly to the case of Lady Jane Douglas, than the whole of the circumstances related by Mr. Menager. In the pleading, it was said by one of the council for the pursuers, that he had objections to the deposition of Menager, but he did not think proper to explain these objections, and they are not perceptible from the evidence. He insinuated, that Mr. Menager had been employed by the Dutchess of Douglas as her surgeon, and might be thereby under influence. The insinuation was highly injurious, when the witness himself has said, and the fact is certain, that he never was employed by the Dutchess, till after his examination as a witness in the cause, and it is well known, that he told the same facts before the Dutchess's arrival in France. The circumstances deposed to by him are remarkably confirmed by a variety of proofs.

Indeed, the man's own character and situation in life, place him beyond the least suspicion of having transgressed the truth. He is utterly unconnected with the defender, was discovered by accident, and had a conversation with Mr. Andrew Stuart, relative to these facts, as early as the month of October 1762, at a time when no person was acting for the memorialist in France.

The existence of the Pierre La Marre, described by Mr. Menager as a surgeon in Paris in the years 1748 and 1749, is a fact now admitted on all hands. His widow still lives in Paris, and a variety of persons who were acquainted with him have been examined. The pursuers, indeed, were pleased in their condescendence, and in the pleading on the relevancy, to insist, that his name was Mart, and not Marre: this, however, is now also admitted by them to be a mistake. The common appellation of him, and all his family, and the name under which he obtained his privilege among the surgeons at St. Cosme, was *La Marre*. It was observed too, that this La Marre who lived in Paris, was christened *Lewis Pierre*, whereas, the La Marre mentioned as the accoucheur of Lady Jane Douglas, was called *Pierre La Marre*, without any other name. This is likewise a most trifling observation, the fact being, that almost every person in France has two, three, or more Christian names, but all of these are generally dropt, except one. La Marre never was known, even among his most intimate companions, by the name of *Lewis*, as appears from the oaths of Menager, and several other witnesses examined upon this point.

That Lady Jane and Sir John, at this time, had a connexion with a Pierre La Marre, is a fact also proved beyond the possibility of doubt. It appears not only from the oaths of Sir John Stewart and Mrs. Hewit, but is established, in a remarkable manner, by a piece of evidence altogether unfuspicious, viz. the private article in Lady Jane's pocket-book, wrote with her own hand, of date the 11th September 1749. It is incredible that Lady Jane Douglas should, on the 11th September 1749, have inserted an article of that kind in her private memorandum-book, with a view of imposing on the world, by the publication of that book at some after-period of time.—Had this been the view, she could with equal ease have inserted many other articles more express, with regard to the birth, which are not to be found in it. Besides, it will be afterwards shown, that a correspondence by letters, between Sir John, after he returned to Reims, and a man-midwife or surgeon, of the name of La Marre, is very clearly ascertained by the evidence.

A connexion, therefore, and correspondence, with a Mr. La Marre, seems undoubted, and, as the pursuers have been at pains to show, that there was no other La Marre at that time in Paris, whom Sir

John

John and Lady Jane could be supposed to have any acquaintance of, except the Pierre La Marre above mentioned, who is acknowledged to have lived there at the time, it seems to follow, of necessary consequence, even independent of Mr. Menager's oath, that he must be the man.

From a *procès-verbal*, produced by Mr. Andrew Stuart, it appears, that the widow La Marre told, that after her husband's death, she had burnt some of his usefess papers, among which were letters mentioning the name of *Stewart*, or some such name.—It will be observed too, that this same Pierre La Marre agrees exactly, in size and figure, to the description of him given by Mrs. Hewit; a circumstance extremely remarkable, when it is considered, that she was examined in July 1763, long before any of the Paris proof was adduced. She Purf. pr. 254
says, "he was a black grim man, and lean or thin;" and Mr. Po-^{K.}
tron, who was well acquainted with him, says, he was a "little thin Def. pr. 545
"man, with black eye-brows." D.

When your Lordships find a connexion, so undeniably proved between Sir John Stewart, Lady Jane, and the La Marre, who then lived in Paris, what inference are you to draw?—One of two suppositions seems altogether unavoidable, either, *1mo*, That he was accessary to an imposture then carried on; or, *2do*, That he was really and truly the accoucheur of Lady Jane. Of the first, there is not the least trace or vestige in the evidence. We do not find him concerned, in any shape, in the enlèvement of a Mignon or a Sanry. The pursuers have not pretended to argue, that there is the smallest colour for making him an accomplice. It follows therefore, that the history given by Mr. Menager, applies to the delivery of Lady Jane Douglas, and that it is in every article founded in truth.

But indeed the circumstances told by Menager, do by no means depend on his single testimony. Madame Granette, the sister-in-law of La Marre, deposes, "That the said De La Marre, surgeon at Paris, Def. pr. 567
"was her brother-in-law, having married her sister. Depones, That
"having gone once to take a walk with said M. de La Marre, who
"was *then married* to the deponent's sister, he left the deponent, and
"said to her, *Wait for me, I'm going to see a child, who will be one day one*
"of the richest in his kingdom, whose month I'm going to pay. The depo-
"nent does not remember, at what time the said M. de La Marre had
"this conversation with her, nor in what place they were taking their
"walk, nor even if it was in Paris, or in the neighbourhood of it.
"Depones, That the said M. de La Marre did not say to the deponent,
"that this child was a foreigner; nor did not then say any other
"thing to the deponent, than what she has just deposed. Depones,
"That the said M. de La Marre, since that time, has told her the
"same

“ same thing *fundry other times*; and that when she asked at him where
 “ he was going, he answered her, that he was going to pay the
 “ nurse’s month for this child. Depones that the said M. de La
 “ Marre never told her, that this child would make his, de La Marre’s
 “ fortune, but that he said nothing else to her, than what she has de-
 “ posed: That when M. de La Marre, her brother-in-law, spoke to
 “ her of this child, as is above said, he was married to her the depo-
 “ nent’s, sister, and lived at Paris, but the deponent did not lodge with
 “ them. Depones, That the said M. de La Marre was very reserved,
 “ and said nothing to his wife, nor to the deponent, of the deliveries he
 “ performed, nor the names of the women whom he brought-to-bed.”

Plur. pr. 621,
 B.

It is in proof, that La Marre was married after the 13th November, 1747; consequently, as the witness says, that he was married at the time mentioned by her, this coincides entirely with the story of Menager, who makes the incident to have happened in the 1748, and one of the children to have been under his care. The words of *his kingdom*, denote also the child of a foreigner.

Def. pr. 540,
 B.

Mr. Simoneau deposes, “ That he practised during twenty years
 “ in quality of surgeon at the Hotel-dieu, until the end of the year
 “ 1747, when he there gained his freedom: That he there saw Mr.
 “ Lewis Pierre de La Marre, practising at the said Hotel-dieu, in the
 “ Salle of lying-in women, in the same quality of surgeon; and be-
 “ lieves, that the said Mr. de La Marre, entered to the said Hotel-dieu,
 “ before him, the deponent; believes also, that the said Mr. de La
 “ Marre left the said Hotel-dieu a good while before the deponent.
 “ Depones, that he saw the said Mr. de La Marre very little since he,
 “ de La Marre, left the Hotel-dieu, not having seen him but two or
 “ three times, and not being in use to be much in his company. De-
 “ pones, that he heard from the said Mr. de La Marre, about *ten or*
 “ *twelve years ago*, one day that he met him upon the key de La
 “ Vallie; that he, the said Mr. de La Marre, had brought-to-bed, a
 “ *foreign lady*, without saying of what country; and that this affair
 “ had been advantageous for him, and that he had been well paid;
 “ that Mr. de La Marre did not say to the deponent, at what time this
 “ delivery had happened, and if it was recently or long before; adds
 “ of himself, that there is appearance, that it was long before, because
 “ Mr. de La Marre told the deponent, it is some time since, and a
 “ good part of these louis (in speaking of the money which he had re-
 “ ceived) is spent; adds also, that he is not certain of the period when
 “ Mr. de La Marre had this discourse with him, but only of the fact.
 “ Depones, that having asked at Mr. de La Marre, where he then
 “ lived? Mr. La Marre answered him, that he lived in *the street St.*
 “ *Anne Butte St. Rock*, at the entry of the street; and the deponent
 “ said

" said to him, that he would go and see him, which he did not do, so
 " that he never saw him in that house, and that he never saw him,
 " even after this conversation,"

But what puts it beyond doubt, that he was the accoucheur of a stranger lady in the year 1748, who was delivered of twins, and that one of these twins was for a considerable time at nurse under his inspection, in the neighbourhood of Paris, is the remarkable and clear proof, to be afterwards stated, concerning the nurse Garnier, who unquestionably received the child, nursed by her, from Pierre La Marre, and which child was a twin, and belonged to foreigners.

To this strong and connected evidence, with regard to La Marr, ^{1st Objection relative to La Marr.} it was objected, imo, That he appears never to have made any mention of this accouchement of the stranger lady, to his brother François La Marr, who was then a young lad, bred to the same business, and living in Paris.

It is a circumstance of no moment, that François La Marr does not ^{Answer.} remember to have heard his brother talk of this delivery. This will not destroy the positive evidence of those who did hear him mention it. François La Marr himself, as well as Madame Granette, the sister-in-law, and several other witnesses, say, that the accoucheurs generally keep their deliveries a secret, and that La Marr, in particular, was of a reserved disposition. François was then a very young lad, and it is not surprising, that his brother should not have consulted with him upon every occasion of that sort. The fact is nevertheless certain, that he did deliver a stranger lady at that time of twins, and had one of the twins committed to his care at a village near Paris. At the same time, there is one circumstance a little singular in the evidence of this François La Marr. It appears from Mr. Andrew Stuart's journal in process, that when first questioned upon this subject, he did say to the agents for the pursuers, as well as to those of the defender, that his ^{Def. pr. 746.} brother was acquainted with a Madame La Brun, who lived in the Fauxbourg St. Germain; though afterwards, in his examination as a witness, he has endeavoured to retract this, and say, that he does not know that his brother was connected with a woman of that name. François La Marr says too, that he was much connected with his brother Pierre, and saw him almost every day. The contrary of this is proved by several witnesses. Mr. Cocquerel mentions a variance or coldness between them, and Mr. Menager depones, that they did not see each other frequently, and that François was much younger than his brother. — 573, F

An attempt was next made to show, that the story told by La Marr, ^{2d Objection.} about his delivering a stranger lady of twins, happened before he left the Hotel-dieu, which was in the year 1747, and the witnesses depend-

ed on for proof of this circumstance are, Mr. Giles and Mr. Melé, who were acquainted with La Marre in the Hotel-dieu, and whom Mr. Menager himself appeals to, in relating the history of this delivery.

Answer.

Mr. Menager does not directly appeal to Mr. Melé, but only says, *he believes* La Marre may have also mentioned the affair to Mr. Melé. Accordingly Mr. Melé has a confused remembrance of having heard La Marre talk of an accouchement which would be of advantage to him. It is true, he thinks this conversation happened in the chambre des gardes; but, imo, it is probable that La Marre spoke at different times, among his companions, of different deliveries. 2do, Mr. Melé adds, that he has frequently seen La Marre visiting his companions in the Hotel-dieu, *after he had left it*, and, particularly, has seen him in the chambre de garde, and the deponent has once or twice supped with La Marre in his own house. This witness, therefore, supposing the fact mentioned by him to be the same, gives no distinct account of the time, and, indeed, remembers very little about the matter."

Purs. pr. 403,
A.

With regard to Mr. Giles, it is very certain that he once told the same story with Menager, and even what he now tells on oath, when considered, is no way contradictory. The memorialist believes Mr. Giles to be a man of character, and he does not presume, that his having been employed in the family of Mr. *Bubot*, an agent for the pursuers, *before his examination*, had any more influence upon him than the employment of Menager in the Dutcheffs of Douglas's family, *after his examination*, had upon the last mentioned person. But your Lordships will observe what were the particulars first told by Mr. Giles concerning this affair.

After Mr. Menager was discovered in January 1763, a French council employed for the memorialist being desirous of tracing the enquiry a little further, spoke of it to Mr. Morand, a surgeon of eminence, who happened to be his acquaintance, desiring him to enquire at Mr. Giles concerning the particulars related by Menager; and for that purpose he put into Mr. Morand's hands the following questions to be put to Giles.

Def. pr. 536,
D.

" Mr. Giles is intreated to say, Whether he knew Mr. La Marre, surgeon privileged, who practised as a man-midwife?

" If Mr. La Marre never told him, that in July 1748, he had brought-to-bed a Scots lady of quality?

" Whether he had any knowledge of the child, of which he, Mr. La Marre, had the care of at Menilmontain?

" Or of the woman La Brun, in whose house La Marre received the child?

" Whether

" Whether La Marr was married in the 1748 ; and if he believes that La Marr's wife had any knowledge herself of the delivery, of the place where Madame Le Brun lived, and of the child at nurse ?

" Whether Mr. Giles is not connected with Mr. Menager, surgeon, who ought to know as well as he of this affair ?

" It is said, that an exempt of police, with whom Mr. Giles dined, put to him the same questions, and that Mr. Giles answered him with a sincerity and probity worthy of himself, which did him honour with the parties concerned."

Mr. Morand not being particularly acquainted with Mr. Giles, employed Mr. Moreau, first surgeon of the Hotel-dieu, to put the questions ; and accordingly Mr. Moreau, some days after, returned the questions with the following answers, which he said had been dictated by Mr. Giles, and wrote by Mr. Moreau in his presence.

" 1mo, Mr. Giles knew that Mr. La Marr dealt in man-midwifery:

" 2do, This gentleman told to Mr. Giles, that he was to bring a stranger lady to-bed, who might make his fortune, and that he had delivered her of *twins*.

" 3tio, The said Mr. La Marr mentioned, that he had the care of a child who was at Menilmontain ; but Mr. Giles never saw the child, nor went with him to see him ; there was only Mr. Menager ; who accompanied him several times in the journeys which he made there, without however having seen the child, as Mr. Giles says.

" 4to, Mr. Giles knows, that the lady was brought-to-bed in the house of *Madame Le Brun* of two children, as Mr. La Marr told him at the time. He does not think that Madame La Marr has any knowledge of it. He does not know if Madame Le Brun exists. He never knew her.

" 5to, Mr. Giles knows Mr. Menager as his cotemporary at the Hotel-dieu, but he never had any particular connexion with him."

A notandum is subjoined in these words : " The questions are wrote by the hand of Mr. Morand : The answers are wrote by Mr. Moreau, under the diction of Mr. Giles."

An exception was taken to these questions, that they tended, in some degree, to lead the witness. But your Lordships will observe one remarkable circumstance, that, in the whole of the questions, there is no mention made of twins ; and yet the answer to the second question, taken down from the mouth of Mr. Giles, says, that La Marr told him, he had delivered the lady of twins. And indeed Mr. Menager, in his deposition, says, that in the conversation with Mr. Andrew Stuart, " Mr. Giles was the first that mentioned the circumstance of *twins*." This he expressly affirmed upon oath, in the presence of Mr. Stuart himself. The remark upon Mr. Giles's *sincerity and probity*, shows,

shows, that the agents for the memorialist had been informed, and had reason to believe, that his account of matters had coincided with Mr. Menager's. Both Mr. Morand and Mr. Moreau are persons of the highest reputation in their profession; and it cannot be supposed, that they would use the least endeavour to influence the witness, or obtain unfair answers from him. Mr. Moreau deposes, " That having

Def. pr. 534,
G.

" read the questions to Mr. Giles, he wrote immediately, in his presence, the answers which the said Mr. Giles gave to each of these questions, as the deponent read the questions one by one; and that he afterwards delivered the paper, containing the questions and answers, to Mr. Morand."

Now, your Lordships will compare this account, originally given
— 532, by him, with his deposition. " Depones, That he knew Mr. Pierre
F.

" La Marr, surgeon at Paris, from the year 1740, and even before that they practised and lodged together at the Hotel-dieu, but occupied their separate apartments, which, however, entered from one another; and the deponent was no otherwise connected with the said Mr. La Marr than as his comrade. Depones, That, in passing, in the chambre de garde of the Hotel-dieu, he has heard Mr. La Marr say, two or three times, that he had brought-to-bed a lady of distinction, who was a foreigner, of whose child he had the charge; and that he reckoned, if the child lived, it would be worth a great deal to him. Depones, That he does not recollect to have heard from Mr. La Marr, that this lady was brought-to-bed of twins, or of what age she was, or of what country she was, or from whence she came, or when she arrived at Paris, or in whose house she was delivered: That he never knew a woman of the name of Le Brun, nor did he ever hear the said Mr. La Marr say, that he was acquainted with a woman of that name: That the said Mr. La Marr was acquainted with a Madam Beaujeu, a midwife, spouse to a grocer. Depones, That Mr. La Marr was not, at the time that he spoke to the deponent of this delivery, a master-surgeon, nor was he privileged: That he had been employed as a commissioned surgeon in the lying-in ward of the Hotel-dieu, which gave occasion to the midwives, who had practised there about his time, as they knew him, to call him often; he does not recollect precisely at what time Mr. La Marr spoke to him of this delivery; *said at first, that it ought to be in the Years 1746, 1747, or 1748*; and thereafter, in explaining himself, of his own accord, observed, that it could not but be before the year 1748, because that, in the said year 1748, the deponent was no longer in the same chamber, nor even in the same story with the said Mr. La Marre, and that he had removed up into another chamber of said Hotel-dieu; and it was in the guard-room

" whilst

“ whilst he lodged with the said Mr. La Marr, that the deponent
 “ heard him speak of this delivery, and that, since that time, after
 “ the deponent left said chamber, he had no further connexion with
 “ said Mr. de La Marr, that the deponent never met him in Paris since
 “ above five or six times at most.”

His *non memini* as to the twins and La Brun is of little importance, though somewhat extraordinary, after what he himself dictated to Mr. Moreau. But the circumstance chiefly taken hold of in his deposition is his correction with regard to the time, *viz.* that it must have happened before the 1748, because it was in the chambre de garde that he heard La Marr speak of this accouchement, and he had no connexion with La Marr after he left the Hotel-dieu, though he admits that he met with him afterwards five or six times in Paris. When this passage of his oath is examined, two things very plainly appear. In the first place, that this was the first time Mr. Giles had ever pretended to say that the conversation with La Marr was prior to the 1748; for in the former part of his oath he mentions the 1746, 1747 and 1748, and it is only in recollecting himself that he brings it to a time prior to the 1748. But, 2dly, even this recollection does not proceed from any distinct remembrance of the fact, but depends on a *causa scientiæ*, which in itself is most imperfect and fallacious.—He says it must have been before the 1748, *because La Marr had left the Hotel-dieu by that time.* But what then? does not the witness himself say, that he had opportunities of seeing La Marr after he had left the Hotel-dieu? and is it not clearly in proof that La Marr was in use to return and visit his companions in the Hotel-dieu, after the time of his leaving it? This is proved, not only by Mr. Menager, but by Mr. Melé, Mr. Cocquerell, and several other witnesses; and besides, the time of this delivery mentioned by La Marr, is proved by the oath of Madame Granette his sister-in-law, and by Mr. Simoneau, to have been after the 1747, to say nothing of the facts deposed to by Garnier and her husband, which clearly ascertain it to have been in the 1748, the child which Granier then had under her care having been nursed on the milk of her own child Jerome, who was born in March 1748. The oath therefore of Mr. Giles is no contradiction to Menager or to the other evidence with regard to La Marr. The extrajudicial answers made by Giles, though no legal evidence, are sufficient to cast the balance in favour of Mr. Menager, more especially, as it cannot be imagined, that if he had been conscious of telling a falsehood at the time, he would have appealed to another living witness who might have it in his power to refute him.

It was said in the pleading, that the defender's agents had acted unfairly in keeping up his extrajudicial declaration, and not producing it

to the witness when he was afterwards examined. The fact is, that it did not occur at the time, either to the parties or the witness, that there was such a paper, and, consequently, it was kept up with no wrong intention; and had it been asked for by Mr. Giles, or so much as thought of at the time of his examination, it certainly would have been produced to him. The defender has more reason to complain of the pursuers for their conduct in the article of declarations. They examined Mr. Clinton in England, a material witness, on some points of the cause, in virtue of a commission from the Tournelle, which commission never was returned to that court. They also examined him privately in spring 1763, upon written interrogatories furnished by Mr. Stuart, and they obtained answers from him in his own handwriting; these answers, as well as the *ex parte* Tournelle oath, they kept in their pockets, when they afterwards adduced him in October 1763, as a witness under the commission of your Lordships, the defender and his agents being ignorant of these facts till after his examination.—Mr. Stuart had also, during his researches at Aix-la-Chapelle, taken *notorial declarations* from all or most of the persons afterwards adduced at that place as witnesses. These declarations were not produced, nor offered to be produced, by those acting for the pursuers, when the witnesses came to be examined, and it is believed they are still in the possession of Mr. Stuart. Your Lordships will therefore judge how far the complaint with regard to Giles, comes with a good grace from the pursuers.

Objection 3. The Pursuers were next at pains to set forth the obscurity and poverty of this Pierre La Marr, whom they would suppose to have been in so low a way, that he could not be the man-midwife of Lady Jane Douglas; and they say, that, in his account-book in process, there are only to be found three deliveries in the course of several years, for which he received very small sums. This book, your Lordships will be informed, is only a confused and irregular jotting of some of his money transactions, with many blanks, and leaves tore out in different places; so that no evidence whatever can arise from it with regard to the number of his deliveries—One of the articles, however, contained in this book, is in the following words:

“ 20 May 1750. Received from Mad. Le Brun . . . 260

from which it is plain that he had a connexion in the way of business, with a person called Madame Le Brun. It appears that the widow La Marr was summoned by Mr. Andrew Stuart to produce any registers or books which her husband may have kept, in the Tournelle, and that her answer was as follows: “ That she
Def. pt. 743. “ is

" is not possessed of any register of deliveries; that her husband
 " kept none, and that it is not even usual to keep any.—De-
 " clares, that after her husband's death she burnt sundry letters which
 " appeared to her to be useless, wherein mention was made of the
 " name of Stewart. And further declares, that Antoinette Granette,
 " her sister, then living with her, had heard her deceased husband say
 " one day, when they were walking together out of Paris, that he de-
 " fired her to stay a minute, till such time as he should go and carry
 " money to a woman for nursing a child, who would be the richest
 " person in his kingdom."

That Mr. La Marr was in fact a practitioner in midwifery, and had
 considerable experience, though not a licensed surgeon, is proved be-
 yond the possibility of doubt, not by Mr. Menager alone, but by the
 following witnesses: Mr. Giles depones, " That Mr. La Marr had been Def. pr. 533,
 " employed as a commissioned surgeon in the lying-in ward of the B.
 " Hotel-dieu, which gave occasion to the midwives who had practised
 " there about his time, as they knew him, to call on him often."
 Mr. Simoneau depones " to his having practised in the ward of lying- —p. 540, B.
 " in women in the Hotel-dieu." Mr. Potron depones, " That it con- —p. 544, G.
 " fisted with his knowledge that La Marr did practise midwifery
 " out of the Hotel-dieu, and that he asked the deponent once, while
 " they were together at the Hotel-dieu, to assist him with his advice
 " and help at a preternatural birth, which happened at the Quinze
 " Vingt, and was of the wife of a blind person. Depones, that tho'
 " La Marr did not deliver women at the Hotel-dieu, he had opportu-
 " nity at the time that he was commissioner, to see sundry of them,
 " when there happened any at the time of the dressing, which is or-
 " dinarily for an hour in the morning and an hour in the night. De-
 " pones, that, after the deponent's departure from the Hotel-dieu, he
 " has had little occasion to see the said Mr. La Marre, but that he
 " spoke to him all the times that he met him, and does not recollect
 " that the said Mr. La Marre spoke to him of delivering women. De-
 " pones, that he never saw Mr. La Marre operate at any other delivery
 " but that above deposed to; but that, by the manner in which he did
 " it, the deponent judged that he was understanding and skilful in
 " his art" This witness, who is an accoucheur, depones, " That he had —p. 545, G.
 " occasion to deliver a woman, aged fifty-two, of her first child, and
 " that it often happens, that women are brought-to-bed at the age of
 " forty-eight, forty-nine, and fifty, though he cannot condescend on
 " particular instances."

It is in proof, that many persons exercise midwifery without having Purf. pr. 484,
 any right or privilege. Mr. Hart, surgeon of the regiment of Dillon, C.
 deposes, " That he himself, though not licensed, and precisely in the —p. 159, G.
 160, A.
 same

“ same situation with La Marre, was in use to practise midwifery, and
 Purs. pr. 407, “ even to give lectures upon it.” Mr. Beaujeu says, that La Marre
 C. once delivered his wife.—François La Marre says expressly, that his
 —p. 185, B. brother was employed in midwifery. The same thing is proved by
 —p. 404, H. Mr. Melé and Mr. Pagnon, two of the pursuers witnesses.
 411, D.

The attempt therefore to vilify La Marre, by describing the poverty of his situation, and mentioning, that, when a boy, he was taught to shave by his uncle du Quenel, the barber, can no way avail the pursuers. Many of the most noted surgeons in foreign countries have had no better original, and it is enough to say, that he was, in fact, a practitioner in midwifery, and appears to have had considerable skill in that profession.

Object. 4th. Some observations were also made on particular parts of Menager's oath, which were said to be inapplicable to the case of Lady Jane Douglas; for example, the circumstance of La Marre's having said that he was bespoke before-hand, and the great advantage which he seemed to expect from that delivery.

Answer. With regard to the former of these circumstances, the fact was certainly true that La Marre was engaged some days before the delivery, in which interval he appears to have spoke of it to Mr. Menager; and, though the witness seems to think, that the first conversation happened before the lady's arrival in Paris, this is a very immaterial discrepancy, which must have proceeded from mistake or forgetfulness, as indeed it would have been surprising, if, in the recollection of his conversations with La Marre, he had been accurate and precise in every particular.

As to La Marre's having boasted of the advantages which would accrue to him from the delivery, and from the care he had taken of the child, it was not at all unnatural for an unlicensed surgeon, in a country, where even the first rate persons of that profession are but very meanly paid, to think himself enriched by a moderate sum. Sir John, though he was generally in want, and appears to have been so at the particular time of his arrival at Paris with Lady Jane, was very liberal when he had money, and would no doubt pay La Marre genteely for his trouble, and very probably mentioned to him the great quality of Lady Jane, in order that he might be the more careful about the child. Any circumstances of this kind, which have the appearance of not agreeing with the delivery of Lady Jane, tend rather to confirm the testimony of the witness, as they show that he was in no concert, nor had in any shape been prompted; and indeed, his general character and circumstances in life, place him beyond the least suspicion of undue influence.

Object. 5th,
 arising from
 Sir John's declaration.

To the identity of Pierre La Marre, it was, in the next place, objected, that Sir John Stewart, in his declaration, has

has related some particulars concerning the accoucheur of Lady Jane, which do not seem to answer the description given of the La Marre who lived in Paris.—He says, that, in a jaunt which he made by himself to Paris in June, or the end of May 1748, he accidentally met with Pierre La Marre, whom he had been acquainted with in the year 1721 at Liege; that the said Pierre La Marre had been introduced to him by one Colonel Fontaine, and that he was a Walloon, *as he believes*; and said, to the *best of the declarant's remembrance*, that he had been surgeon to a Walloon regiment, though the chief branch of his business was acting as a man-midwife: That La Marre, upon meeting him as above at Paris, told him, that having been called up upon an *affaire epineuse*, he believed he would continue some time at Paris; upon which Sir John engaged him to assist at Lady Jane's delivery; that he declined however to acquaint Sir John where he lodged, but said he would be found at certain times at the Thuilleries or the Luxembourg. Further declares, that after he came to Paris with Lady Jane, he often met with La Marre at Peletier's coffee-house, and at a tavern called the Source de Burgoyne; and that he was towards sixty years of age, not so tall as the declarant, *of a thin make, and a dark complexion*.—In his deposition afterwards emitted before your Lordships, Sir John recollected, that though La Marre at first refused to give him a direction to his lodgings, yet he afterwards gave him such direction before Lady Jane was delivered.—It further appears, that, in a conversation with Mrs. Napier in 1756, the circumstance of Sir John's believing La Marre to have been a surgeon to a Walloon regiment, was mentioned and taken down by Mrs. Napier in one of the notes produced; as also the name of Colonel Fontain, who is designed *oculist to the invalids at Paris*.—Another circumstance with regard to the accoucheur of Lady Jane, is said to appear from a postscript of one of the letters in process, where he is mentioned as having made a journey to Italy, and staid twelve months at Naples, subsequent to the 1749.—At the same time this letter, as well as three others, which appear under the subscription of Pierre La Marre, are maintained by the pursuers to be false and forged.—The defender will have occasion hereafter to state what occurs upon the subject of these letters. At present it is only necessary to make some observations on what has been said with regard to La Marre, in order to take off the objection to his identity.

Purs. pr. 9.

A.

In general, the defender does by no means apprehend, that his birth-right depends on the reconciliation of every seeming contrariety in the proof, or that he is obliged to account for every reveree or slip of memory, which witnesses may have fallen into, especially in their explanations of distant and collateral facts. The memories of men are almost as various as their faces and it is not at all an unusual case for

Answer,

the imagination to bear a considerable share in the recollection of past events.—The proof in this cause affords instances of many different degrees and kinds of memory. Some of the female witnesses have a peculiar knack at remembering *speeches*, and can repeat the very expressions and words used in conversation many years before, yet, when examined as to facts, they are mistaken in material circumstances.—Others, by frequent repetition of a story, have persuaded themselves that circumstances are true which never had an existence. A remarkable instance of this occurs in the case of a lady, who says she was present on the first or second day of August 1748, when a letter was read from Lady Jane Douglas to Lady Mary Hamilton, dated, not from Paris, but from some other place, in which Lady Jane expressed herself as if she had been *taken short* at the place from which the letter was dated, and had been obliged to lie-in there. This has the appearance of being an unfavourable circumstance. But the real fact appears from the letter itself in process, which is dated, not in 1748, but upon the 2d April 1749, and, in place of saying that Lady Jane was *taken short*, or implying that she had been under a necessity of lying-in at Reims, says only that she intended to have gone to Geneva, but was unable to make out so long a journey at that time, *and therefore stopt short at Reims*, which is true; but it does not contain a syllable implying that the delivery was at Reims.—The first letter wrote by Lady Jane to Lady Mary, after the birth, was of date 7th October 1748, as appears from comparing it with Lady Mary's letter to Lady Jane, of date 8th August that same year. In this first letter she mentions the children, but says nothing of the journey or place of delivery; and the letter of 2d April 1749, is the next, and only one, which makes the least mention of her stopping at Reims.

Other witnesses are perplexed in their ideas, and connect different æra's, transactions, and places, so as to make one story out of the materials of two or more different incidents, which in fact had no connection with each other. And some witnesses, without the least intention of departing from the truth, have been obliged to a lively imagination or to some erroneous impression, for supplying them with circumstances in which they would otherways have been totally deficient.—Lady Rutlege, a woman incapable of telling a falsehood, has fallen into a variety of unintended mistakes in her deposition. Mr. Mailfer, a gentleman of undoubted character, has said that Sir John Stewart and Lady Jane, upon leaving Reims in July 1748, gave out that they were going to Viller Coteret; whereas, from his own letter in process, it appears, that he was the very person who recommended them to Godfroi's at Paris. Madam Audry, and Mademoiselle Vatry, who went in the stage-coach with Lady Jane from Reims to Paris, give accounts

Purf. pr. 346,
E.

347.

p. 64, K.

Def. pr. 983.
—1008.

p. 151, A.

Purf. pr. 92.

accounts of that journey totally different from each other; and many similar instances might be given.

The singularity of Sir John Stewart's character, of which there is evidence before your Lordships, sufficiently accounts for any seeming oddities in his conduct, or any mistakes he may have fallen into in his relation of past circumstances. He was universally known to be a man of honour and spirit, but impetuous in his manner, careless to the last degree, and a declared enemy to thinking, either of the past or of the future.—Mr. Hepburn of Keith, a gentleman of worth, and intimately acquainted with Sir John, has said, "That he had an expensive turn, and was very generous. Depones, that Sir John had a very bad memory as to names and dates, though he would remember a joke very distinctly; and the deponent remembers, that Sir John forgot a visit which he made to the deponent and his family at Boulogne, and denied his being there, though he had remained with the deponent and his family there for eight days; and was only convinced of it at last, by showing him a night-gown, which he made a present of on that occasion to the deponent. Depones, that he thinks, that if the children had not been Lady Jane's, that Sir John, who was a hasty man, would have disclosed it many ways." And being interrogate for the pursuers, Whether he thinks one of the ways would have been by giving contradictory accounts? depones, "That, from the opinion which he had of Sir John, he did not think him capable of telling a lie knowingly, though he might make mistakes; and the deponent has known him in several mistakes."

Purs. pr. 337,
L. 338.

Mrs. Hepburn of Keith depones, "That Sir John had a very bad memory as to names and dates, and the deponent has been in many disputes with him on these subjects; that Sir John was always very positive till he was convicted by some strong circumstances; and that this happened, in particular, in regard to a visit which he made to the deponent and her husband at Boulogne, where Sir John was for a week; but afterwards denied his having been there, till the deponent convinced him by some strong circumstances, and particularly, entertaining him with an Amiens pye: That Sir John, though often convicted in this manner, did not seem to be sensible of his own defect of memory; at least the deponent never heard him acknowledge it." And being interrogate, If the children had not been Lady Jane's, could Sir John have kept the secret? depones, "That, from the violence and heat of Sir John's temper, the deponent does not think he could have carried through a thing of that kind, without blundering in some shape or other, which the deponent declares she never observed; and the deponent thinks, that if the children
" were

p 340, D4

"were not Sir John's, he would not have gone through such a scene of distress on their account, but would have got free of them some way or other."

Def. pr. 408,
F.

Mrs. Skene depones, "She was long intimately acquainted with Sir John and Lady Jane, the deponent being Sir John's second cousin; that she does not think that either Lady Jane or Sir John were capable of imposing children upon the world as theirs, that were not their own: That Sir John had not a good memory for names and dates; on the contrary, she has known him to have mentioned many things to have happened at times different from what they did happen, but thought that he remembered facts well."

Not only does Sir John's peculiarity of genius appear from the parole testimony of witnesses, but there is real evidence of it from facts which are proved. The note to Mrs. Napier, which omits the name of La Brun, though that name must have been previously known to him, whether the birth was real or fictitious, affords one specimen of his forgetfulness in facts the most material.

Parl. pr. 566,
D.

The circumstance of dropping his man-servant by the way, was once considered by the pursuers as a capital ingredient in this pretended imposture.—Sir John, when questioned upon this head, could give no earthly account of the matter;—and, to this day, it would have passed as a circumstance of most suspicious aspect, had not the man's wife been accidentally discovered, by whose evidence it appears, that her husband was a French deserter, and for that reason did not leave Aix-la-Chapelle, though asked by Sir John to go along with them; and this fact is now put beyond doubt, by a letter wrote at the time, and lately recovered, from Sir John himself to Lord Crawford, wherein he says, "Lady Jane and I are made happy by your servant's being to make the journey with us, the more, *that her only footman happened to be a French deserter.*"

Parl. pr. 826,
G.

But the most extraordinary instance of this kind, appears from a letter wrote by Sir John to Mr. Mailfer, at Reims, of date 18th January 1763, and sent with one of the gentlemen who went from this country to assist as council for the memorialist in France, in which letter he, among other things, says, "If you please to take the trouble, Sir, to ask Mr. Andrieux, wine merchant, *in whose house we were lodged* on our arrival at Reims, Madame Andrieux probably will remember if we went to lodge elsewhere, before we set out for Paris, as I have a confused idea that this was the case. If so, it was certainly Madame Andrieux who found for us that other lodging." Had any thing, in this case, depended on Lady Jane's living in one house, or in another, at Reims, your Lordships see what a foundation is here laid for cavil and suspicion against Sir John. From the 8th June to the 2d

of

of July, almost four weeks, did they reside constantly in the house of Mr. Hibert, and the Abbé Hibert was their intimate companion. They were indeed recommended to Mr. Andrieux, but they never lodged one single night in his house. Yet Sir John, in January 1763, when desired, by his son's council, to inform him where Lady Jane and he had lodged in Reims, does not remember one syllable of the house of Mr. Hibert, or of his acquaintance with the Abbé Hibert; and points out to him a wrong house, viz. that of Mr. Andrieux, saying only that he had some faint idea of having quitted Mr. Andrieux's, and lodged some where else, before leaving Reims. In his declaration too, he mentions Mr. Andrieux as his *landlord*, which appears plainly to have been his belief, at the time, though erroneous.

Such was the well known character of Sir John Stewart; thoughtless, forgetful, and hurried away by the first idea that struck him:—When examined before your Lordships, without the least previous warning, on such a multitude of facts and incidents, which had happened many years before, it would have been most surprizing if his memory had served him in every particular.—It is believed no person, who was present at that examination, did then, or can at this day, entertain the least doubt, that Sir John was himself convinced of the truth of every word which he uttered. Though he was distressed at the time with bodily indisposition, and his faculties were impaired by old age, and the misfortunes he had undergone; yet his behaviour was intrepid and firm.—No timidity, no wavering, nor consciousness of guilt appeared, either in his countenance, or in his expression; he even showed that indignant contempt for his accusers, which nothing, but an inward conviction of innocence, could have inspired.

In these circumstances, the defender does, with submission, say, that it would be cruel to take hold of any inaccuracies in that declaration, and set them up as evidences of guilt, on the part of Sir John Stewart. Much more would it be unjust, to insist in them as proofs against the defender, who, in reality, was not a party to the examination. The action indeed had been raised against him, but the *inducie* were not elapsed, and he was not in court. The council, who had appeared for him in another cause, were allowed to attend, but they might as well have been absent. No condescendance had been given in, and, from their ignorance of the facts, they had no opportunity of putting a single cross-question, to make the witness explain himself. The whole three days examination was *ex parte*; the defender's council having only desired two questions to be put to him, viz. When he came from London? And what was his reason for intending to go abroad? Which last was suggested by the petition for the pursuers, in which they said, that he intended to leave the country, in order to shun his examination.

Your Lordships, from experience, must know how different a thing an *ex parte* examination of a witness is, from the examination of that same witness, when interrogated by both parties. Many things, which now appear obscure in the declaration, might have been explained, had cross-questions been put.—But indeed the pursuers themselves did not then intend to make evidence of this declaration; all that they had in view by it was to lead them to an investigation of facts, though, after having obtained this end, they mean now to use it for another purpose, viz. To set it up as a *text*, and to shew that they have refuted certain particulars in it, by the proof since brought. This is, with submission, taking a very unfair and unjust advantage of the defender.—The whole scope of their proof has been, to prove circumstances, not so much contradictory to the birth itself, as to Sir John Stewart's account of it. Had both parties been on an equal footing, when this account of the birth was taken from Sir John Stewart, the defender could have had no reason to complain; but, in fact, they were not on an equal footing, the declaration was *ex parte*, and any errors or obscurities which appear in it might have been explained, and set to rights, had cross-interrogations been put. The pursuers, therefore, cannot be allowed to maintain, that suspicion lies against the truth of the birth, because Sir John Stewart's account of it has been, in some particulars, redargued. Your Lordships have only received it into the proof, as a *circumstance of evidence*, reserving all objections against it; consequently, the utmost that can be made of this declaration is, that Sir John Stewart, when oppressed with old age and infirmities, was brought before your Lordships, without any previous warning, or time for recollection, and examined *ex parte*, upon a thousand different facts and circumstances, which had happened many years before, and which he answered with propriety and firmness; but the pursuers have been able, after incredible expence and labour, to discover, that his memory has in some particulars failed him.

But, after all, when this declaration is accurately considered, it will appear, on the one hand, to contain strong evidence in favour of the defender; and though, on the other hand, some mistakes, or obscure passages, may be found in it, these are, in reality, immaterial, and may be easily accounted for, from the manner of his examination, and the unavoidable failure of memory, in a man of his years and infirmities.

Decl. 2, B. He sets out, for example, with mentioning a journey which he made to Paris by himself in the month of June 1748, before the time of going with Lady Jane in the beginning of July, and he says he lodged,

lodged, at this time, in Godfroi's, and was only a few days in Paris, after which he returned to Lady Jane at Reims.—What has led him into this mistake appears plain from the subsequent part of his declaration, where he says he did not return from Dammartin to Paris, after the delivery, and before going to Reims. The fact is, that he went from Dammartin to Paris in the month of August after the delivery, staid a few days in Godfroi's, and went to see the youngest child, as is proved by the letters wrote at the time, and by his own after-deposition, as well as by Mrs Hewit's; and it does not appear that he made any journey to Paris by himself *prior* to the delivery, though, when examined about these journeys at such a distance of time, he has confounded the two periods, and thereby fallen into a mistake, which, as it is entirely innocent, must likewise have been unintended; the more especially as he mentions the house where he lodged, and how long he staid, from which the true fact could not fail to be discovered. The circumstances of the journey mentioned by him apply, in every particular, except the time, to the journey which he actually made. The council for the pursuers were pleased to figure that this journey was invented, in order to account for his finding out, and preparing La Marre; but this could be no reason for inventing a previous journey, far less for denying a subsequent one. It was just as easy to find out La Marre after Lady Jane came to Paris, as before she came. Mr. Andrew Stuart, in a letter which is in process, of date 21st July 1763, admits that he does not see any motive for inventing this journey: "I have often, says he, inclined to doubt of the reality of this first journey, were it not that I can't see what motive Sir John could have to invent it."

Sir John next falls into a mistake, which the pursuers must certainly admit to have been without intention.—After mentioning the arrival at Paris, the residence in Godfroi's for the first night or two, the delivery at La Brun's, and removal in ten or twelve days upon account of bugs, to Michelle's, he says, "That their whole stay at Paris at this time was about twenty or twenty-two days." Here Sir John is underacting his part most unnecessarily, if he was guilty of a fraud. It is certain that they were in Paris a full month, and even this is thought by the pursuers to have been too short a time for all the business that was done in it, and yet Sir John restricts himself, contrary to the truth, to twenty or twenty-two days. —p. 2, I.

He next mentions the circumstance of Mr. Andrieux's credit having arrived the very day of the delivery. The memorialist has already explained that this mistake could not possibly be intended, because it would have answered Sir John's purpose much better, (if meant as an excuse for not sending for the maids,) had —p. 3, A.

had he told the true fact, that it did not arrive till the 26th July. But the pursuers also take hold of the reason assigned by Sir John, for asking this supply from Mr. Andrieux, viz. "That having applied to a banker, whose name he cannot remember, to advance part of the money which would be due a short time after, and which being refused, the declarant wrote to Mr. Andrieux," and they observed, that both Sir John and Mrs. Hewit had been guilty of a wilful mistake in pretending, that, when at Paris, they were in such scarcity of money, when in fact it appears, that Sir John had a credit from Mr. Kahr, banker in Aix-la-Chapelle, upon Messrs. Taffins in Paris, for 1979 livres.

The fact indeed appears to be true, that they had such a credit, and that they received money from Messrs. Taffins, within two days after their arrival at Paris, but whether this money was for their own behoof, or how they applied it, does not appear. It is nevertheless certain, that they were in the utmost want of money during this expedition, and that they were obliged to make application to different persons for a supply.—The writing to M. Andrieux, a gentleman, with whom they never had any connexion until they came to Reims, for an advance of twenty-five louis d'ores, (which Sir John, by mistake, calls thirty,) is real evidence that they were very much pinched; and your Lordships have also another proof of it from the letter to Lord Crawford, of date 22d July, wherein Sir John says that his finances were quite disconcerted, and that he did not know where to apply but to Lord Crawford's never-failing friendship, "which makes us hope, that, though 100 l. more on the terms of the last 150 l. may perhaps be inconvenient for your Lordship to advance her, yet the pleasure you have in doing good-natured things on all occasions, will, we hope, determine your adding this finishing favour to the many former."

Purf. pr. 62,
W.

The same thing is most convincingly proved by another circumstance.—The pension which Lady Jane received from the Duke was 75 l. quarterly. The payment due at Lammas 1748 had already been advanced to Sir John by Mr. Kahr at Aix-la-Chapelle, being included in the aforesaid credit of 1979 livres; but Sir John, upon his return to Paris from Dammartin, in August that year, finding himself in great difficulties for want of money, and either not attending to the circumstance of the Lammas quarter being already advanced, or being desirous of raising another quarterly payment, which he might replace at Martinmas, applied to Messrs. Pannier for an advance of that sum upon Lady Jane's bill, drawn upon Mr. Coutts. Messrs. Pannier advanced part of the money, and this bill was sent to Mr. Robertson at Rotterdam, through whom the pension was in use to be remitted, but

but Mr. Robertson having refused to pay it, because he had already advanced the Lammas quarter to Mr. Kahr at Aix-la-Chapelle, Sir John, in order to rectify the mistake, gave a new bill for the Martinmas quarter, which Mr. Robertson paid when due.

This transaction appears from the bill of exchange, drawn by Lady Jane upon Mr. Coutts, and correspondence in consequence thereof—Lady Jane's bill is in these words :

" Sirs,

Paris, 8th August 1748.

" I beg of you to pay this my first bill of exchange, to the order of ^{Def. pr. 729.}
" Messrs. Panniers and brothers, the sum of seventy-five pounds sterling, which place to the quarter's annuity due at Lammas, which
" ought to be in your hands.

Directed to Messrs. John Coutts }
and company, at Edinburgh. }

Signed, Jane Douglas."

Of the same date with this bill, Sir John wrote to Mr. Robertson the following letter :

" Sir,

" I send of this date two bills on Mr. Coutts and company, for the ^{Purf. pr. 557.}
" annuity due to Lady Jane Douglas, of the Lammas quarter; they ^{R.}
" will come to their correspondent in Amsterdam indorsed, that they
" may be given to you, and I hope you will pay them punctually,
" as usual, as they are made payable 1st September, according to a-
" greement."

Upon the above bill's being presented to Mr. Robertson at Rotterdam, he wrote the following letter to Sir John Stewart:

August 13th, 1748.

" I have one of yours from Reims, 22d July, and two from Paris; ^{p. 602, J.}
" 8th current, the last forwards letters for Scotland, which go off this
" night, and also advises of your having given bills on me, for Lady
" Jane's quarter, of 800 G. payable 1st September next, which surprises
" me not a little, as I have Lady Jane's bills, for said quarter, sent
" me some time since, by Mr. Kahr of Aix, for the value of which he
" has drawn upon me already, so I can't accept another bill for same
" quarter, so I am sorry I shall be obliged to suffer them to return ;
" the bill on Mr. Coutts for 75 l. is now before me, I mean that you
" gave Mr. Kahr, is dated in Aix 29th April, and is drawn in French,
" payable 1st September, new-style, so you have forgot your having given
" that to Mr. Khar, if you have drawn another, &c.

3 L.

Upon

Upon receipt of this, Sir John wrote to Messrs. Pannier.

" Gentlemen,

Reims, 17th August 1748.

" We arrived here yesterday, and I take this first opportunity to
 " send you inclosed, first and second bills of exchange, which will
 " rectify the blunder which I committed, in making the other bills
 " payable three months too soon, by your indulgent goodness—I
 " will not say that Mr. Robertson will accept them, but under the
 " pain of my head, he will pay them when they are due. If, on dis-
 " counting the interest, and the expences which my stupidity has cost
 " you, you would send me an order on your correspondent for the re-
 " mainder, you would do an additional pleasure to those already done,
 " in favour of your humble servant,

Signed, John Stewart."

Along with this letter he sent a bill drawn by Lady Jane Douglas, upon Mr. Coutts, for 75 l. sterling, as the Martinmas quarter's annuity.—And upon the 21st August 1748, Sir John wrote to Mr. Robertson in these words:

" Sir,

Pars. pr. 603.
B.

" I had the favour of yours, telling me of your just surprise with
 " my having given bills twice for the same term, you have a letter
 " from me long ere now, explaining that mistake.—I beg you'll for-
 " ward the inclosed per first occasion, and send me here, what letters
 " may come for me, without loss of time, as I am expecting some of
 " consequence from home.—I beg if you scruple to accept the bill
 " I have given Messrs. Pannier for the Martinmas annuity, you
 " may at least pay it punctually when it falls due, as I hope you
 " have done that of Mr. Khar, at Aix, for Lammas, in this you will
 " much oblige, &c."

The want of money, therefore, while at Paris, is undeniably proved, notwithstanding the credit on Messrs. Tassins; and it is impossible now to say in what manner the money received on that credit was employed, or what became of it; the pursuers have not pretended to say, that it was bestowed in any shape connected with the supposed fraud, and it is enough for the memorialist to show, that the fact averred by Mrs. Hewit and Sir John with regard to the scarcity of money at that time, is certainly true.

The

The mistake of calling Mr. Andrieux his landlord, and the correction about the widow lady, owing to the confused remembrance of two women-lodgers, one at Michelle's, and another at La Brun's, have already been explained.

Another fact mentioned by him is in these words, "That, so far as Decl. p. 3, C. he can recollect, it was *Godfroi's people* that recommended him to Madame La Brun." This may be true for any thing that appears in the evidence, though it was more probably La Marre than Godfroi's servants, that pointed out the house of La Brun. But Sir John's mentioning Godfroi's people, as having recommended this house to him, makes greatly in his favour, as it cannot be supposed, that he would have appealed to them for the truth of a fact which he was conscious had no existence.

In talking of Michelle's, he describes it as a very large hotel.—In fact it is a very small one, the name of it is the Petit hotel d'Anjou, and Sir John, who could have no view in disguising that fact, must only have thought it large in comparison of La Brun's.

Being interrogated at what house in Dammartin he lodged, he can give no account of the house or of the sign, though he says it was the best, if not the only publick house in the village. Neither does he remember the distance from Paris to Dammartin, or how many days he took from Dammartin to Reims. It would be ridiculous to suppose that any of those *non memini's* were intentional. — p. 14.

Another fact declared by him is in these words: "That in returning to Reims, they did not tarry unnecessarily on the road, further than that they passed a night or two with a countryman of theirs, Mr. George Leslie, who then lived at Villers Coterets." — Mr. Leslie has been examined as a witness for the pursuers, and depones, Purf. pr. 355, A. "That he saw Lady Jane Douglas and Sir John Stewart at Reims, before they went to Paris; and that this happened, as the deponent thinks, in the year 1748; that the deponent being at Villers Coterets, a message was sent to him, as far as he remembers, with Lady Jane and Colonel Stewart's compliments; and that they passed through there: That Villers Coterets is upon the road from Reims to Paris: That the message, as delivered to the deponent by his servant, also bore, so far as he remembers, that Lady Jane and Colonel Stewart had not time to see the deponent." Both Sir John Stewart, and Mr. Leslie, are in a mistake as to the fact. The memorialist is certainly informed, that Mr. Leslie did not live in Villers Coteret in the year 1748, though he lived there in 1749, when it is probable he either saw Sir John and Lady Jane, or that messages passed between them as mentioned in his oath. But neither Sir John nor Mr.

Mr. Leslie could have the smallest scheme in disguising the truth as to this matter. The mistake in both must have been unintended, as it could serve no purpose, and it only shows the fallibility of human memory, and the danger of relying on parole evidence in the proof of facts at such a distance of time.

Sir John next says, that the delivery happened some time in the *forenoon*, and this is taken hold of as contradictory to Mrs. Hewit, and to the letters wrote at that time, which make it rather to have been Decl. p. 5, E. in the afternoon or the evening. But to this it is answered, that Sir John himself immediately subjoins an explanation which sufficiently reconciles his evidence, viz. "That it was *at least* before the declaration *had dined*," which is extremely probable, considering the anxiety that Sir John must have been in at the time.

Mrs. Hewit and he also differ in a most immaterial circumstance, viz. Whether La Marre came of himself, or Sir John went out to find him, upon the day of the delivery. Discrepancies of this kind tend, in reality, to corroborate their testimonies on the material facts, as they show, that there was no concerted tale nor combination between them. The duplicity of argument, in which the pursuers have indulged themselves, has already been noticed. They take hold of every seeming *contrariety*, and likewise every seeming *agreement*, in the evidence of the witnesses.

p. 9, H.

Another instance of forgetfulness in the declaration, is with regard to the nurses. He does not recollect any of their names, except Mangin, whom he calls *Manger*, and he says, the nurse who came from Paris to Dammartin, was a taylor's wife. It is impossible that he could have the least design in concealing the name of the nurse Favre, or in making her husband a taylor, when in fact he was a joiner; and the mistake in Mangin's name must have been equally unintended.

p. 9, E.

Service, p.
34.

In another passage he says, that the eldest child having been sent to the nurse's house in Paris, while they were changing their lodgings, the child remained with her for two days or thereby, "and the declaration *does not know* the particular street where her house was." This was taken hold of as extremely surprising; but your Lordships will observe, that Sir John only says, he *does* not know, not that he *did* not know where this house was. It is plain from Mrs. Hewit's letter to the servant-maids, mentioning Sir John's having gone to the nurse's house, and sending the coach for her, that he must have known at the time, though he does not now know, or does not remember the particular spot where the woman lived.

The mistake about the landlady's having brought the child to Michelle's, when it appears from the letters at the time, that he himself and Mrs. Hewit went for it to the nurse's house, must have been altogether

ther involuntary; because, whether the child was real or supposititious, there could be no reason for varying the fact, as to the way and manner of bringing it from one house to another.

Another fact mentioned by him is in these words, that the nurse who went to Dammartin with them, "having discovered herself to be with child, she would continue no longer; whereupon the landlady at Dammartin prevailed with different women, from time to time, to suckle the child, out of a principle of humanity; till at last they discovered and got a very good nurse, who then happened to be reaping the corn." On the other hand, from the depositions of Favre and Mangin, it would appear, that there were no intermediate nurses or milk-women between them. It is impossible to figure a reason, why Sir John should have wilfully departed from the truth in this matter. He had then a child, either real or supposititious; he had brought the nurse Favre from Paris with him, who did not choose to go any further; and therefore the nurse, Mangin, was hired at Dammartin. In what shape could it serve the purpose of an imposture, or prevent the detection of it, to invent intermediate nurses between Favre's departure and Mangin's being hired? When your Lordships see Sir John falling into such mistakes in innocent and immaterial particulars, this must serve as a key to the other blunders which are supposed to be more capital. Decl. p. 9. G.

The same observation will serve as an answer to the confused account given by Sir John and Mrs. Hewit, and which appears to run through some of their letters at the time, with regard to the number of nurses. That he had at least four nurses is certain, viz. the nurse that first suckled him; the bad nurse that was brought to Michelle's; nurse Favre, who went with them to Dammartin; and Mangin, whom they got at that Place, and carried to Reims. None of the letters wrote at the time, make the number to be less than four; and one letter from Mrs. Hewit to the servant-maids, speaks of five. The reason of this may possibly have been, that a milk-woman was got to suckle the child, perhaps, for a day or two, in the interval, between dismissing one nurse and getting another at Paris. It is impossible now to explain every little circumstance of this kind. At the same time, it appears from the oath of Michael Favre, that his wife only took charge of the defender till another nurse should be found; "and that there were sundry who offered themselves, but would not leave Paris." This circumstance, together with the number of nurses which the child certainly had, may have occasioned some confusion as to the precise number. Had the birth been fictitious, the facts given out would have been more invariable, and their account of matters more accurate. Def. pr. 590. D.

Sir John, in another passage, says, That the first time he saw his youngest son at the village where he was nursed, was when he returned 15, L.

Decl. p 12, E. turned to Reims from Paris with Baron MacElligot and John Hay, *i. e.* in October 1748. Here Sir John again under-acts his Part (if guilty of a fraud) without the smallest necessity, and against truth. It has already been said, that he returned from Dammartin to Paris, and at that time went to see his son. Had the existence of this youngest child been fictitious, it was just as easy for Sir John to have said, that he saw him a hundred times, as that he saw him once. Every mistake of this kind turns in favour of Sir John, as it proves mere forgetfulness without any intention, and shows the very reverse of imposition or artifice. It cannot be doubted that Sir John frequently saw his youngest son, when at Paris. Mrs. Hewit says, he brought accounts of the child's welfare to Lady Jane, while in that city; and it is in proof, that he returned from Dammartin once, and from Reims several times, on purpose to see him, besides corresponding with the man-midwife every week. That Sir John was in a mistake in his declaration, appears from a passage in his after-deposition, in the following words: Being asked where he found the child Sholto, in November 1749, when he took him from nurse? depones, "That the house where the deponent and Pierre La Marre found the child, was the same house where the deponent formerly saw the child, in a visit in the 1748, from Dammartin, to enquire after the child."

Purs. pr. 247, H. Sir John further declares, "That a great many ladies did visit Lady Jane whilst at Reims, both before she went from Paris, and after she returned, particularly, the receiver-general's lady, Madame la Leu, and the syndick's lady, Madame Maillefer, and several others." It has already been said, that Sir John, in January 1763, within a month of his declaration, had so entirely forgot every transaction at Reims, that, when talking in confidence to the council of his son, he gave a wrong direction to the house where he had lodged, which could not be done with any view of imposition, because he, at the same time, gave a direction to the family of Mr. Andrieux, who could at once explain how the fact stood, and point out the houses where Sir John and Lady Jane had lodged. The ladies here mentioned by him, were indeed acquainted with Lady Jane, but at a period subsequent to the delivery, and Sir John could have no scheme in pointing them out as acquainted with her before the delivery. Mrs. Hewit tells the true fact, that she was not visited by the Reims ladies before going to Paris; and here again it will be observed, there was no combination between Mrs. Hewit and Sir John.

Decl p. 13, C. Sir John, in talking of La Marre's letters, says, "That the copies were made when the declarant resided in Southwark, where he was only one year," Nothing can more clearly demonstrate the strange unaccountable inattention and weakness of memory of Sir John, than his imagining that he had only been a year in prison, when, in fact, he was above

above three years. A scroll of a letter from himself to his brother, without any date, but which appears to have been wrote by him, when in confinement, says, "However much I may have former-^{Def. pr. 878, G.}ly been in the wrong to you, which never was, nor could be, but an unguarded expression, in resentment of what I thought (in mistake perhaps) looked like great unkindness in you, I hoped that what I said in my last, under Lundy's cover, might have attoned for, 'twixt gentleman and gentleman, much more so 'twixt brothers.— But since I find that submission has not been able to take off the edge of your resentment, the unhappy situation of my wife and family, and my having been now *three and twenty months in prison*, forces me to make, unwillingly, one other effort, which is, asking forgiveness in what I may have offended rashly. This ought to take place, if forgiveness is hoped for from heaven, where we must soon answer. I take God to witness I have never done you a material injury, but, much to the contrair, has had the good fortune of being the lucky instrument of procuring you happiness. I shall trouble you no further, but to remind you I am, in great distress, your affectionate brother and humble servant." Even the most unfortunate circumstances of his life had not left any distinct impression upon his memory.

A question put to Sir John, was in these words: "Whether La-^{Decl. p. 17, B.}dy Jane made any excursions from Reims into the country, or remained close at Reims till she set out for London?" To which he answered, "That, to the best of his remembrance, she did not make any such excursions, only thinks she once went out, and perhaps twice, to the house of Sir Walter Rutledge, about two or three miles from Reims." In making this answer, Sir John could not have in view to conceal the journey to Paris in November 1749, to bring Sholto from the nurse, of which he gives a full account, when examined about it in his after deposition. The interrogatory seemed only to relate to excursions into the country, and the inaccuracy of the question led Sir John to shape his answer accordingly.

When your Lordships perceive such a series of involuntary mistakes running through the declaration of Sir John Stewart, what judgment are you to form on that Part of it which gives the history of La Marre? Are you to believe, that his recollection was more accurate, and his ideas more distinct upon the article of Pierre La Marre than upon other collateral events, equally important and interesting to him at the time, but in which, from mere failure of memory, he has erred. In capital facts, Sir John bears direct and positive testimony to the birth; he conceals neither the residence at Godfroi's, (which the pursuers say was till then unknown to them,) nor the different removals, nor any other particular, so far as his memory could serve him; and he

he says he is *confident and certain*, that the defender is the son of Lady Jane Douglas ; but, in his account of less material particulars, in the course of a three days examination, his memory [has proved incorrect in a variety of particulars, which the memorialist had no opportunity, by cross-questioning, to make him recollect or explain. In such uncommon circumstances, your Lordships will make great allowance, and, if you see strong out-lines, attended with firm behaviour and consciousness of truth, you will accept of these as a full equivalent for all his inaccuracies.

It will be observed, that he gives a description of La Marre, which, in every particular but the age, agrees exactly to the Pierre La Marre, who is acknowledged to have lived at Paris ; and, as he expressly says that he left the youngest child under his care for sixteen months together, it cannot well be doubted, that Sir John did then understand La Marre to be an inhabitant of Paris. The other particulars, therefore, which he tells of La Marre's being surgeon to a Walloon regiment, of his first acquaintance with him at Liege in 1721, and of going to Italy, &c. must have been owing to some confusion in his ideas, similar to that which many of the witnesses in this cause have fallen into.—It is certain, that Sir John was at Liege in the 1721 ; it is certain also, that, at an after period, he lived at Boulogne, in the neighbourhood of Montreuil, where La Marre was born, and where he may have had occasion to meet, and become acquainted with this same Pierre La Marre.

His acquaintance with Colonel Fontaine is probable, as it appears, that such a man did really exist, who died in 1761, in the hospital of invalids at Paris ; and, from a copy of La Marre's book in process, it is plain, that there was a Fontaine, with whom he was acquainted, and whom he appears to have attended in the way of his business. The following articles are to be found in it relative to Fontaine.—

“ 1750 le 15 May, une saignée du Bras à Monf. Fontaine—Plus une
 “ saignée du Pied.—27 une saignée du Bras à Monf. Fontaine.—1 Juil-
 “ let une saignée du Bras à Monf. Fontaine.—16 Septembre une saignée
 “ du Bras à Monf. Fontaine.—1751 le 16 Mars, une saignée du Bras à
 “ Monf. Fontaine.”

This Colonel Fontaine may have introduced him to a Walloon surgeon in the 1721, or possibly to La Marre himself, at a period after the 1721 ; and Sir John, in his after recollection of past circumstances, may easily be supposed to have confounded different men, or different dates. His appeal to Mr. Pelletier, whose coffee-house he frequented, shows plainly, that he had a real Pierre La Marre in view. Declares, “That he is persuaded, that Mr. Pelletier, who is probably a

Decl. p. 8, B. “ live, as he was in the 1748 a young man, will remember seeing the
 “ declarant and Pierre La Marre together.” Mr. Pelletier happens to be

be

be dead, and his wife, who was then very young, and probably did not wait in the coffee-house, does not remember any thing of Pierre La Marre; but it is remarkable, that Sir John Stewart, from her deposition, appears to have wrote letters from Reims to her husband, and that letters addressed to Sir John were left at this coffee-house, which her husband forwarded to him at Reims, from which it is plain, that there was a connexion with Pelletier, and likewise with some other person living at Paris, who sent letters for Sir John to Pelletier's coffee-house; and, at any rate, it is very singular, that he should have appealed to Pelletier for his acquaintance with La Marre, if such acquaintance was entirely a fiction.

That there was a connexion and correspondence between Sir John and La Marre, seems undoubted from the whole of the circumstances above set forth, and that La Marre delivered a foreign lady of twins, and had the care of one of her children, and that this happened in the year 1748, is likewise very clearly in proof.—The consequence seems unavoidable, that he was the real accoucheur of Lady Jane Douglas.—It is not unlikely, that this same Pierre La Marre may have had expectation of being appointed surgeon to a regiment, and may have mentioned something of that kind to Sir John; for it will be observed, that Sir John does not talk very certainly about the matter, but says only, *as he believes*, and, *to the best of his remembrance*, &c. And Mr. Def. pr. 530
Menager says, he believes La Marre was once appointed surgeon of a E.
regiment, though he never joined it, a fact which may be very true, though other witnesses do not remember to have heard of it.

The circumstance of La Marre's being an unlicensed accoucheur, may have occasioned certain injunctions of secrecy, when he undertook to deliver Lady Jane, and this, in some measure, explains the seeming mystery about the *affaire epeneuse*, and the refusal to tell his lodging, &c. Your Lordships will observe a remarkable passage in his oath concerning La Marre's lodging. He recollects, that La Marre Purf. pr. 246,
did at last give him an address to his lodging, though he at first de- E.
clined it; and he depones, "That the deponent does not remember, whether the address was given him in writing or not, nor does he recollect what it was, further than *that the deponent's wife lately told him where Pierre La Marre's wife lived*; and he cannot even recollect that particular description, nor, when he was told it by his wife, could he recollect that the place mentioned by her was the same as the place in the direction given him by Pierre La Marre." It is incredible that Sir John would have talked in this easy way about his present wife (Lady Stewart's) having informed him where the widow of La Marre lived, had he been conscious that no La Marre had ever existed, or that he was not the accoucheur of Lady Jane.—But it is

unnecessary to chace these difficulties any further. It is enough to say, that a La Marre is proved, and that material facts may be and *are* true, though the pursuers have been able, in the course of their unwearied investigations, to throw some degree of obscurity upon accessory and immaterial circumstances.

Objection 6,
arising from
Mrs. Hewit's
oath.

Certain alledged *absurdities*, in the oath of Mrs. Hewit, were in the last place taken hold of, as contradictory to La Marre.—She says she never saw La Marre before the day of the delivery; that she only saw him once visiting Lady Jane after the delivery; and that he sent his servant to enquire about her health. The pursuers thought it singular, that he should have given so little attendance on Lady Jane, and they observed, that he was not in a condition to keep a servant.

Answer.

Sir John says expressly, that he did introduce La Marre to Lady Jane before the day of the delivery, and that he called frequently, or sent, to enquire for her. Mrs. Hewit has either not been present, or does not remember the fact. The same thing is to be said of his attendance after the delivery. The contradiction is immaterial, and shows, at least, that Sir John and she were in no concert. Supposing the whole story of the birth to be fictitious, Mrs. Hewit could just as easily have said, that La Marre gave the most punctual attendance, as that she only saw him once or twice. Mrs. Hewit does not say, and probably did not know, whether La Marre had a servant of his own, or employed a person who was not his servant, to go messages for him. The circumstance is of too trivial a nature to require an answer.

Mrs. Hewit's oath stands therefore uncontradicted by these trifling objections, though, had she been guilty of real mistakes, it would have been no great wonder, when questioned upon such a multitude of facts, of so ancient a date, at a time when her faculties and health were still more impaired than Sir John Stewart's. It appears from an extract of her baptism, that, at the time of her first examination, she was in the seventy-first year of her age; and, when a second time examined by the court, was in the seventy-third. It appears that, in like manner with Sir John, she has fallen into mistakes in incidental circumstances, which could not possibly have been intended, because they answer no end or purpose whatever. For example, she says, the servant-man whom they had at Aix-la-Chapelle, came along with them to Liege, and left them at that place, whereas, in fact, it is proved that he did not leave Aix-la-Chapelle. She says, the marriage was known to Lady Katharine Wemyss before she left Aix-la-Chapelle; Lady Katharine Wemyss says the contrary; and either Mrs. Hewit or Lady Katharine must be in a mistake, but it is a mistake from which no inference can be drawn; for Mrs. Hewit could not mean

Serv. p. 11,
E.

Purs. pr. 250,
L.

mean to depone falsely, in a circumstance of such trifling moment, in which she knew Lady Katharine herself might contradict her. She further says, that, when at Michelle's, they had their meat furnished to them by the house in which they lodged, whereas it appears that they were furnished by a *traiteur*. The pursuers themselves will not pretend to say, that this could be intended. Purs. pr. 252, K.

It would be hard, indeed, if the defender's birth-right were to depend on the accuracy of an old woman's memory, deposing to such a number of facts, at the distance of fifteen years. At the same time, Mrs. Hewit's depositions are supported in every material article, and she has only fallen into such mistakes as most other persons would have done in the like situation. The keenness of the pursuers has led them to take hold of the most trifling inaccuracies; and because they themselves lay down this proposition, that she is perjured, or an accomplice, they think your Lordships will consider her evidence in the same light, and construe every mistake into a falsehood. One particular he had almost forgot, which shows how unreasonably her evidence has been attacked, and how providentially it has been supported. The pursuers seemed to think, that the appearances of pregnancy at Reims were magnified by Mrs. Hewit, and particularly, in the description given by her, of lifting Lady Jane into the coach. It happens, however, that the very two persons who assisted on that occasion have been examined, and have deposed to the fact. Had these two gentlemen been dead, and the oath of Mrs. Hewit stood single in so remarkable a circumstance, it may easily be imagined what an outcry would have been made, and how strenuously the pursuers would have insisted that Mrs. Hewit was directly perjured in this capital circumstance, because unsupported by any of the people in the stage-coach, whose memories seem to have totally failed them, as to any of the incidents of that journey.

The next article of negative proof, depended on originally by the pursuers, was the supposed non-existence of a Madame La Brun in the Fauxbourg St. Germain of Paris, who kept an hotel or furnished lodgings in the year 1748. This fact was offered to be proved by them in the following words: "That, in the year 1748, there did not exist MADAM LA BRUN.
" in the Fauxbourg St. Germain, any person of the name of Madame Art. 26. condescend.
" Le Brun or La Brun, who kept either hotel, lodging-house, or chambers to lett, as will be proved by the register kept at the office of
" police, authenticated by the subscription of the lieutenant-general
" de police of that year, by the books of capitation, and by other
" evidence."

The pursuers seem here to have proceeded on a mistaken supposition, as if it had been asserted by Sir John, Lady Jane, and Mrs. Hewit, that the delivery happened in one of those hotels or furnished lodgings

lodgings which are entered in the records of police.—No such thing was ever affirmed either by Sir John, Lady Jane, or Mrs. Hewit; on the contrary, it was all along said, that they had left the hotel de Chalons, in order to be free of noise; and, as it is well known, that, in Paris, there are women called *gardes malades*, who make a profession of attending sick people, and particularly women in child-bed, and who have private houses or *depots* for that purpose, the natural presumption is, that Mr. La Marre would recommend them to the care of one of these *gardes malades*; and it is in proof, that houses of that kind do not enter into the records of police.—Mr. John-Baptist Figac, surgeon privilegii, depones, “ That it is lawful for the men-midwives to

Def. pr. 516,
G.

“ bring women to-bed in their own houses, or elsewhere, without being obliged to keep any book for the police; and that it is also allowed them to take particular houses in their own names, to bring women to-bed in, and to send their nurses to take care of them, without being obliged to make any declaration to the police. Depones, that he has no knowledge that any of his brethren have apartments, or particular houses furnished for this purpose; that, in particular, the deponent had a house of this sort where he sent sick people to, but never any women to ly-in. Depones, that the men-midwives are in the use to keep secret the deliveries which they perform. Depones, that those who practise man-midwifery, without a privilege, are exposed to be taken up by the academy of surgeons. Depones, that no officer of police can enter the house of a man-midwife, or other houses where man-midwives may have women in child-bed, without a particular order.”

618, E.

Mr. Fauchat, master-surgeon and man-midwife at Paris, depones, “ That it is lawful for the man-midwives of Paris to bring women to-bed, either in their own houses or elsewhere, without being obliged to keep any register for the police. Depones, that there are men-midwives who take particular houses or rooms in their own name to bring women to-bed in, without being obliged to make any declaration to the police, and that they give them nurses to take care of them.—Depones, that the officers of police cannot enter into the houses of men-midwives, nor into the houses and chambers where they have women in child-bed, without an order from the King.”

Def. pr. 619,
B.

Madame le Brun, wife of Claude le Brun, paper-merchant in Paris, sworn midwife in office at the Chatley of Paris, depones, “ That she has been mistress-midwife since the year 1751, and matron-midwife of the Chatley since the year 1756. Depones, that there is no obligation upon the mistress-midwives, nor upon the men-midwives, and that it is not even the practice to keep any police-book, containing

Ditto E.

"ing the names of the women who are brought-to-bed by them in
 " their own houses, or elsewhere. Depones, that there are keepers of
 " sick people, who receive into their houses women to be brought-to-
 " bed by the men-midwives, and midwives, and that they keep no re-
 " gister of police on this account. Depones, that she has even brought-
 " to-bed women in the houses of keepers of sick people, having been
 " called upon for that purpose. Depones, that the midwives are obli-
 " ged to keep secret the deliveries they perform, and that they make
 " oath to do so upon their reception."

The non-existence, therefore, of a Madame La Brun, as an hotel-keeper in the records of police, is of no sort of consequence; and, supposing no such woman had appeared in the rolls of capitation, this would as little have availed the pursuers. These rolls are far from containing the whole inhabitants of Paris. Mr. Boenvallé has deposed, That ^{Def. pr. 633, B.} though servants pay capitation, they are mentioned in the rolls only by their number and quality, and not by their names, so that tho' the wife of a valet de chambre, maitre d'hotel, or other servant, should happen to be a garde malade, or let rooms, no mention whatever can be made of her in the records of capitation.—He further depones, That the poor widows do not pay capitation, and therefore no mention is made of them in the rolls.—The Swiss and Ge- ^{Def. pr. 648, D.} nevese, who live in Paris, are also exempted from capitation, so are ambassadors, envoys, ministers, and their secretaries and servants.—Masters of corporations and trades are only mentioned in the capitation-rolls, kept at the town-house of Paris, when they have apprentices, journeymen, or servants, and not otherwise.

Further, it is in proof, that the whole trades and communities in ^{—p. 636, A.} Paris pay their capitation to the lieutenant-general of police, and that the rolls thereof are deposited, not among the capitation-records at the town-house, but at the office of police; and Monf. de la Terrier, keeper of the records of police, depones, " That there are no rolls of ^{—p. 634, D.} capitation of the trades existing prior to the 1750."—It is true, that a roll appears to be kept by the *Procureur de Roy*, which contains the name of every person who has been entered in any of the corporations for above fifty years past.—But it also appears, that this roll ^{—p. 573, B.} makes no mention of their places of abode, or of the different houses or quarters of the town they may remove to, so that no aid can be got from this roll in finding out any person. It is proved too, that there are a great many corporations at Paris, and that the members thereof do often let their privileges to others, who carry on the business in their name, but for their own behoof, and who cannot consequently be found in any record of capitation.

Def. pr.
635, 636,
637, 638, &c.

Besides these exceptions from the capitation, it is in proof, that numbers of people escape being entered in the rolls by neglect, see Mons. Pigasse, Mons. Arnoult, Madam Ecoffe, &c. so that it will not appear surprising, if the real La Brun has not been discovered from the rolls of capitation, because, if she was the wife, either of a servant, a Swiss, a Genevese, an ambassador's secretary, a valet de chambre, a tradesman who had no apprentices, or the tenant of any tradesman, or, if she was a poor widow, her name could not be in any of these rolls, and, supposing her to have been in none of these situations, she might nevertheless escape the capitation.

Parl. pr. 926.
E.

The pursuers founded on a third evidence of the non-existence of Madame La Brun, viz. a report made by one Charlier a *huissier*, or officer of the parliament, who made a perquisition in the streets, to the right and left, from the Pont neuf to the Luxembourg, by the rue de la Comedie, "in order to discover, if, in the year 1748, there lived in any of the said streets, a woman of the name of La Brun, "who kept an hotel, or chambres garnies, or eating-house;" and which report does not contain any person answering to that description.

But this report proves nothing more than what already appeared from the records of police. The search was expressly limited to persons keeping hotels or furnished apartments, of that kind which enter into the records of police. The private depots, or houses kept by gardes malades, are entirely different from either hotels, chambres garnies, or eating-houses; the term *chambre garnie* has a known signification, synonymous with that of *hotel garnie*, with this difference only, that an hotel means the whole house, whereas, chambres garnies, signifies a single story, or apartment. The report therefore of Mr. Charlier, is nothing to the purpose, and indeed it appears, that he has omitted a variety of women of that name, who appear from the record of capitation, to have lived in that quarter in the year 1748.

It is extremely certain, that a Madame La Brun, possessing a house, such as is described by Sir John and Mrs. Hewit, *may* have existed in the Fauxbourg St. Germain, in the year 1748, though neither in the records of police, the books of capitation, nor in the report of Mr. Charlier. In the large and very populous city of Paris, nothing is more difficult than to trace people of low station, at any distance of time, even when their names are to be found in the publick records; and if they are not in these records, and happen to be dead or removed to another place, it is next to impossible to discover them. It cannot therefore afford the least argument against the defender, that the Madame La Brun, in whose house Lady Jane was delivered, has not been

been traced, and at any rate, the pursuers have not proved their point, viz. that no such woman existed in the year 1748 in that quarter of Paris. She *may* have existed though in no record. In the case of Rougemont, the argument founded on the records of capitation, to prove the non-existence of the supposed father of that gentleman, was entirely disregarded by the parliament; neither can any argument be drawn from the monitoire which was published in this case, because, in fact, this monitoire contains no invitation to discover a Madame La Brun, in whose house the lady in question was delivered; on the contrary it says, that this lady never did lodge in the house of a Madame La Brun, but was in a quite different house, and never was at all delivered. All revelations, concerning the delivery of a lady in the house of a La Brun, were excluded by the monitoire; and further, supposing any such revelations to have been made, the memorialist has had no access or opportunity to see them.

But, in the next place, the pursuers were entirely in a mistake in saying, that no Madame La Brun appeared in the records of capitation. The contrary is proved by the extracts in process, certified by Mr. Boenville and Mr. Beauvillé. Many women of that name appear from these records, to have lived in different parts of Paris, in the year 1748, particularly these following.

A Madame La Brun, a widow, lived in the rue St. Dominique, in the neighbourhood of the Fauxbourg St. Germain, in the year 1748. She was a garde malade, and had a daughter, and though enquiry has been made, no account can be obtained either of the mother or daughter. Mr. Beauvillé depones, that he saw Mr. Moyent, and also fundry other persons, old inhabitants of the quarter, who told him, p. 571, D:
 “ that they had known the said widow La Brun, living in the fore-
 “ said years in the said house, street St. Dominique, but that they
 “ did not know what was become of her; recollects, particularly,
 “ that one Le Preux, a journeyman shoemaker, living in the Cloitre
 “ St. Jean de Latran, told the deponent, that this widow La Brun
 “ dwelt in the foresaid house; that he had heard it said she dressed
 “ peoples rooms, and took care of sick people, [*qu'elle faisoit des ménage*
 “ *et gardoit des malades*] and that she had a daughter, who might
 “ be about fourteen or fifteen years old in the 1748 or 1749. De-
 “ pones, that the widow Plivat, milkwoman in the said street Domi-
 “ nique, told him, that she knew likewise the said widow La Brun,
 “ who took care of people's rooms, and nursed sick people. Depones,
 “ that he went at the same time to inform himself at the nuns of (the
 “ order) St. Marie, in the street St. Jacques, and that the nun who
 “ receives the messages [*qui fait la fonction de tourriere*] in that con-
 “ vent, told the deponent, that she remembered a widow La Brun,
 “ who

Def. pr. 582,
584, and 585.

“ who lived in the street St. Dominique, and who took care of the
“ sick ladies who were boarded in that convent in the 1749.”

It is also in proof, That there was a person of the name of Madame
La Brun who had a daughter, and who lived in the rue des Amandier
in the 1748, and that both mother and daughter are now dead.

Purf. pr. 253.
E.

Another Madame La Brun appears to have lived in the rue de la Co-
medie, in the Fauxbourg St. Germain, and the history of this
woman and her house seems extremely remarkable. The account gi-
ven by Mrs. Hewit with regard to La Brun is as follows, that besides
Madame La Brun herself, there was in her family, her *daughter* who
was married, as they said, to a person in the army, a servant-maid,
and a *woman-lodger*. That Sir John, Lady Jane, and she had *two*
rooms, and another little one, all upon *one floor*, and she thinks it was
the *first floor*, and that th *furniture was very indifferent*, both in Mi-
chelle's and La Brun's, but best in Michelle's, and she thinks La Brun's
entered from the street

Decl. 3. E.

Sir John, in his declaration, being interrogated, “ Do you remem-
“ ber the name of the street where Madame La Brun lived at the time
“ when Lady Jane was delivered in her house? or, Can you give any
“ description of the place in the Fauxbourg St. Germain where her
“ house was situated? Do you know the names of any of the neigh-
“ bouring streets, or of any publick building or hotel near to it?

“ To this interrogatory, in so far as not answered, declares, That he
“ cannot remember the particulars therein contained, further, than
“ that going up from the Pont Neuf to the Luxembourg, by the rue de
“ la Comedie, it was on the left hand, and that the declarant never
“ could remember the names of these streets, they being so many in
“ number.”

Def. p. 728,
A.

The extract with regard to Madame La Brun, who lived in rue de la
Comedie in the year 1748, is in these words:

Mr. Traver's house.

Mr. Vaillant delft merchant	-	-	-	-	0	0	0
An apprentice,	-	-	-	-	3	0	0
Madame le Brune living on her income,	-	-	-	-	4	0	0
Madame Dumont a burger's widow,	-	-	-	-	6	0	0
Mr. Cornecrot a student of physic,	-	-	-	-	6	0	0

I certify that the above extract is conform to the minutes of the
rolls of the capitation for the year 1749, at Paris the 17th August,
1765.

signed, BOYENVAL.

Though this house, consisting of three stories, besides a shop on the
ground floor, appears to have been inhabited by the above five per-
sons and their servants, it has been found impossible for the memoria-
list

list to obtain the evidence of any one of them in this cause. Mr. Vaillant, the shop-keeper, is dead, the name of his apprentice is not known, and no discovery could be made of him. Madame Dumont, the *widow-woman* is dead. Mr. Corncrot, the student of physick, went several years ago to foreign parts, and has not since been heard of. Madame La Brun appears to have lived in that house only in the year 1748, as she is not in the capitation-books for any prior or subsequent years, and none of the people in the neighbourhood know what has become of her.

Mr. Boyenvale depones, "That it is at the end of every year, and
 " in the beginning of the year following, that the rolls of the capita-^{Def. pr. 633, A.}
 " tion are settled, and signed by the prevot des marchands et echevens
 " of the city of Paris; and that a roll is thus made up each year; in
 " order to compose which, the receivers and comptrollers of the capi-
 " tation are obliged to go into all the houses to verify and ascertain
 " the change of persons who live in the said houses." The meaning^{Purf. pr. 726, &c.}
 of this appears from the titles prefixed to the other extracts produced,
 to be, that on the 31st December, 1748, the rolls of capitation for
 the year 1749, were adjusted by enquiring who were the persons then
 living in each house, so that these rolls, though appearing to be for
 the 1749, are proof only, that the persons mentioned in them, existed in
 these houses in 1748.

After the most diligent search by Messrs. Masson and Beauville, all
 that can be discovered is, that she was a *garde malade*, or nurse-tender,
 and that she had a *daughter*, who was then about eighteen or nineteen
 years old, and is since dead.—Mr. Beauville depones, "That the ex-^{Def. pr. 571, G.}
 " tract from the roll of the capitation for the quarter of Luxembourg
 " for the year 1749, which points out another Madame La Brun, who
 " lived on her income [*vivant de son bien*] as residing in the street de la
 " Comedie, in a house belonging to Mr. Travers: The deponent
 " went thither, and, having addressed himself to Madame Travers,
 " she told him that she had a strong idea that there was one Madame
 " La Brun, who lived in her house in the year 1749; but that she could
 " not say how long time she had staid there, whether three months,
 " or more; but Madame Travers directed the deponent to a woman
 " living hard by the said house, who sells snuff, and who had been for-
 " merly a tenant of the said Madame Travers's; and this snuff-mer-
 " chant told the deponent, that she knew the said Madame La Brun,
 " but does not know what is become of her: She added, that the said
 " Madame La Brun took care of people's rooms, and nursed sick people;
 " and that she had a daughter, or niece, who had died of a disease in
 " her lungs. The deponent adds, by way of explanation, that he does
 " not very precisely remember, whether it was Mrs. Travers who gave
 " the

Def. pr. 576,
F.

“ the deponent this account of the business of the said Madame La
 “ Brun, and of the circumstance of her having a niece, or daughter,
 “ who died of the disease in her lungs.” Monsieur Maffon depones,
 “ That upon another information given him, the deponent, of a Ma-
 “ dame La Brun living on her income [*vivant de son bien*] and residing
 “ in the street de la Comedie Françoise, in the house of Mr. Travers,
 “ quarter of the Luxembourg, in the year 1748, he went to the said
 “ house, where he found only Miss Travers, the daughter, who is
 “ married, and who sent him to Mr. Travers her father [*officer d'office*]
 “ at the hotel de Condé; that the said Mr. Travers having directed the
 “ deponent to Mrs. Travers, his wife, she told him that she had known
 “ the foresaid Madame La Brun living in the said house, in the
 “ years 1748 and 1749; that she had a daughter, who might at
 “ present be thirty-five years old; and that this girl is dead since the
 “ said Madame La Brun's departure from this house, in consequence of
 “ her living too fast; but that she knew neither the time nor the place
 “ of her death. Depones, that Madame Travers having directed him
 “ to one Mrs Locq, who sells snuff in the said street de la Comedie,
 “ he accordingly found the said Mrs Locq, who told him she knew
 “ the said Mrs. La Brun and her daughter, living in the foresaid house
 “ in the years 1748 and 1749. Depones, that Madame Travers told
 “ the deponent, that the daughter was dead, but that the mother was
 “ living, having seen her about three weeks or a month before, tho'
 “ she did not know where she dwelt. Adds, that he does not remem-
 “ ber whether he enquired, either at the said Madame Travers or Mrs.
 “ Locq, about the station or profession [*la qualité*] of the said Mrs. La
 “ Brun, or if she was a widow or married. Depones, that in all the
 “ above enquiries he was accompanied by Mr. Cauvel de Beauville.”

Madame Travers having said that she saw this Madame La Brun very lately, and that she believed she was still in life, every possible enquiry has been made for her by those acting for the memorialist, even since the examination of the above witnesses concerning her, but to no purpose.

The house was the property of Mr. Travers, but rented by Madame La Brun, and the other persons above mentioned; it stands on the *left hand* of the *ruë de la comedie*, in the Fauxbourg St. Germain; the first storey consists of *two rooms and a little room*; it enters from the *street*; the present appearance of the rooms and furniture rather mean; and, in every respect, it answers very exactly to Sir John and Mrs. Hewit's description.

The memorialist does not pretend to say, that there is direct evidence that this is the house in which Lady Jane was delivered; nor does he know whether it is so or not; but it has at least a very striking resemblance;

resemblance; and as it is certain that such a woman did exist, though neither she nor her daughter, nor any of the persons who lived in the house with her can now be found, this must at once overturn the whole system of the pursuers, in so far as founded on the negative circumstance of not being able to discover or trace a woman of that name, who once certainly had a lodging in Paris.

Dr. Gibson at Glasgow says he was acquainted with a Madame La Brun, who lived, when he was at Paris in the year 1745, in the Fauxbourg St. Germain, and who seems to have kept a private *depot*, or house for lying-in women. “ Depones, that he was at Paris in the year 1745, and remained there for about six months, between the months of January and July in that year: that, during that time, he sometimes attended the Hotel-dieu, but during the said attendance, did not see any surgeon there of the name of La Marre. Depones, that while he was at Paris, as aforesaid, he resided some time in the house of Mr. Grigoire, a man-midwife there, and during that time he was oftner than once at the house of a midwife at Paris, whose name was Madame La Brun, to the best of the deponent’s remembrance; and the said Madame La Brun’s house was in the Fauxbourg St. Germain, but the deponent does not particularly remember what was the name of the street in which Madame La Brun’s house was situate, only he remembers it was not very far from the street where the above mentioned Mr. Grigoire lived, and which was called *the street Pierre Sarrazine*.—That the said Madame La Brun was very intimate with the above Mr. Gregoire, who was in use to carry his students, among whom the deponent was, to Madame La Brun’s house, to bring women to-bed there, and the deponent believes, that women brought to-bed in that house, did lodge there, as it is a common practice in Paris, that women that go to lie-in in such houses, are kept there till they recover.”—Whether this was the same, or another woman, of that name and profession, does not appear.

Def. pr. 394 B.

395, A

In opposition to this strong circumstantial evidence, with regard to a La Brun, two arguments only were pleaded by the pursuers, 1mo, That Sir John, in his declaration, talks of La Brun’s as a lodging-house, similar to that of Michelle’s. 2do, That though there are women called *gardes malades*, who keep private houses or *depots* for lying-in women, such houses are only used by servants, and others of the lowest class, who have no convenience at home in such cases.

Objections

To the first of these observations, it is answered, That Sir John does not mention La Brun’s either as an hotel or *chambres garnies*, and he was not interrogated as to any distinction between lodgings which enter into the police records and those which do not, nor is it probable that he

he

he knew the distinction, supposing he had been interrogated upon it. To the second, the memorialist answers, that there is no evidence of the fact asserted by the pursuers, with regard to these depots or private lodgings. It is, in general, proved, that the accoucheurs and gardes malades have a connexion with each other, and that they have lodgings of that kind for the convenience of women in child-bed.—A connexion between La Marr and a Madame La Brun, appears from the proof; and La Marr's interest, no doubt, led him to recommend Sir John to the house possessed by this woman. The lodgings were none of the best; and this accounts for Lady Jane's being so soon removed from them.

But, indeed, a satisfactory answer arises to every objection which can now be made to the existence of a La Brun, from the admission lately made by the pursuers in their pleading, that Sir John, Lady Jane, and Mrs. Hewit, were five days in a house in Paris, between the time of their leaving Godfroi's and their entry to Michelle's. An intermediate house being admitted, why not suppose this house to have been possessed by a Madame La Brun? The pursuers do not pretend to fix them in any other house during that time.—It is certain that a variety of La Bruns existed, whom the vigilance of neither party can trace.—The inference therefore is plain, that, by the admission of the pursuers themselves, Lady Jane, Sir John, and Mrs. Hewit, *may* have been in the house of a Madame La Brun, subsequent to their leaving Godfroi's, and before entering to Michelle's. This, indeed, they limit to a residence of five days; but the memorialist will have occasion, in the sequel, to demonstrate, that the evidence from which this limitation is inferred, is entirely inconclusive.

Indeed the proof of reconvalence at Michelle's affords satisfying evidence of an intermediate house, and the anxious enquiry which they seem to have made about bugs, when they came to Michelle's, is a further circumstance agreeing with the accounts uniformly given by Sir John and Lady Jane, of their reason for leaving La Brun's, more especially, as it is not pretended that they had any such ground of complaint at Godfroi's.

At the same time, though it should appear that the woman herself, or her house, have not with certainty been ascertained, this negative circumstance cannot be of the smallest consequence, more especially, when it is considered, that Sir John Stewart, the only person alive who could probably have made an effectual enquiry for the house, was prevented, by the Tournelle operations, from going to Paris, when he fully intended to have gone.—It is remarkable, that though Lady Jane and her family were nine days at Sedan, in their way from Liege to Reims, and, though Sedan is but a village, in comparison of Paris,

yet

yet neither party, during their enquiries at that place, could make the least discovery of the landlady, with whom they had lodged, or any other person who had seen them. Several other persons whose evidence would have been material in the cause, and whose existence is with certainty proved, have not been traced, though all possible enquiry has, by both parties, been made for them, particularly the nurse who was dismissed after coming to Michelle's.

The only other supposed defect in the circumstances of the birth was the not finding out the nurse of Sholto, or the village where she lived. The memorialist does by no means apprehend, that he was under the least obligation to trace this woman, or to investigate the place of her abode, as it could never have affected the reality of his birth, though she had never been discovered.—At the same time he shall state the evidence which has been accidentally recovered upon that head, in doing which, he will also have occasion to touch upon the various proofs of Sholto's existence, during the first sixteen months, a fact, which has of late been called in question by the pursuers.

It will be remembered, that the account from the beginning, given out by Sir John Stewart, Lady Jane, and Mrs. Hewit, and since deposed to by Sir John and Mrs. Hewit, was, that Lady Jane was delivered of twins; that the youngest of these twins was very weak and delicate, and, for that reason, left with a nurse near *Paris*, under the care of La Marre, the *accoucheur*, who sprinkled or *ondoyed* him. How this idea of an *ondoyment* by the man-midwife, should have come into their heads, if the existence of Sholto was a fiction, and if no such ceremony was performed, is difficult to be conceived.

In their letters, wrote from Paris, of date 22d July, to the servant maids and others, the youngest child is described as *small and weakly*, for which reason the doctor advised, that he should be sent to the country as soon as possible, and accordingly, they say, he was given out to a woman, whom they describe as an *excellent* nurse. Sir John, in his letter to Mrs. Hepburn, 6th August, after describing the weak state of the youngest child, mentions, that he had got a *very good nurse*, and with the advantage of the *country air*, might still live, and possibly do well.

On the 11th October, same year, Lady Jane writes to Mrs. Hepburn, "Your friend Mr. Stewart is gone the day before yesterday to see little Sholto, who is still mighty weak and tender, though rather somewhat revived and better, I hear within these few weeks. Mr. Stewart took the opportunity of going along with Baron MacElligot, who was obliged to go to *Paris* about some affairs, he returns again in a fortnight, or three weeks; if you or Mr. Hepburn have any commands

“ commands for him to execute while he is at Paris, let me know,
 “ and I shall write to him about it, you know he'll be fond to serve
 “ you. Since you're so good's to interest yourself about me, I know
 “ you'll be satisfied to hear, that your young friend little Archibald
 “ continues still, I bless God, both strong and well.”

A great many other letters are in process, (some of which will be afterwards noticed) wrote by them while at Reims, to different persons, mentioning Sholto's state of health, the goodness of his nurse, his teething, and other circumstances relating to him. Madame Daux, at Dammartin, says, she was told by the nurse Favre, that the lady had been delivered of twins. At Reims too, they often spoke of their second child Sholto, in conversation among their acquaintance, described his weakly state of health, that he was left at nurse in the neighbourhood of Paris, under the care of the man-midwife; and that they frequently got letters concerning him.

Def. pr. 597,
 D.

Mangin the nurse depones, “ That she has heard Madam Stewart
 “ and the chamber-maids speak often of the child who was at nurse
 “ near Paris; that she has even been employed in making cloaths for
 “ this child, and that she knows that Mr. Stewart went sundry times
 “ to see this child, and carried him linens two or three times.”

p. 603, D.

Madame Mailfer, depones, “ That on the return of Mr. and Ma-
 “ dam Stewart from Paris to Reims, the deponent heard from Mr.
 “ Stewart, that his wife was brought-to-bed of two male-children,
 “ does not remember if Madam Stewart likewise told her so. Also
 “ depones, That she knows that Mr. Stewart, and the female compa-
 “ nion of Madam Stewart, went a journey to Paris, does not know in
 “ what time, nor how, to bring the second child that Ma-
 “ dam Stewart remained at Reims. Depones, that this journey did
 “ not endure long, but she does not know how many days it lasted.
 “ Depones, that in fact they brought a child, who appeared to the
 “ deponent, when she saw him the day after his arrival, weak and
 “ delicate, fair, and very white, resembling his mother, as much as
 “ one could observe at that age. Depones, that she had few occa-
 “ sions to observe this child, because Mr. and Madam Stewart depart-
 “ ed a short time after his arrival, perhaps a month, or perhaps six
 “ weeks, she cannot recollect the time exactly; and that moreover, she
 “ cannot say if the two children appeared to be of the same age, see-
 “ ing the one was strong and the other delicate. Depones, that she
 “ never had any doubt, nor knew any body who had doubts of these
 “ children being Mr. and Madam Stewart's.——Depones, that Mr.
 “ and Madam Stewart, before the second child was brought to Reims,
 “ spoke of him as being at nurse somewhere near Paris, but that they
 “ never mentioned the place.”

605, B.

Lady Wigton depones, " That Lady Jane told her she had left her other son at Paris, with the surgeon who attended at her delivery there, on account of the said child's being weakly and tender." Ser. p. 27, P.

Miss Primrose, who lived in family with Lady Wigton, depones, " That she heard from Lady Jane, Lady Wigton, and others, that the other child, who was named Sholto, was left at nurse, at some place Def. pr. 358, F.

" near Paris, on account of his weakness, and that he was committed to the care of the man-midwife who had delivered Lady Jane. De-

pones, that above a twelvemonth ago the deponent was in France, when she heard from a French physician, who then attended the 359, A.

Dutchess of Douglas, at her Grace's house in Paris, where the de-

ponent then was living, that the name of the place near Paris, where Sholto was left at nurse, was Menilmontain, and that the deponent did

then recollect, that that was the place which she had heard named at Reims as the place where Sholto was nursed:—That during the

same period the deponent heard of letters being received by Sir John or Lady Jane, from the man-midwife who had the care of

Sholto, giving an account of Sholto, and particularly one of them mentioned, that Sholto was not well; but the deponent did not see

or hear any of these letters read, but remembers to have heard Sir John speak of these letters, when the deponent was dining in Sir John's

house at Reims.—Depones, that when the French doctor mentioned, as aforesaid, Menilmontain as the name of the place where Sholto

was nursed, the deponent did immediately tell the Dutchess of Douglas that was the place where she had heard Lady Jane say, at Reims,

her son Sholto was left at nurse." She thereafter depones, that she went from Reims to Paris with Lady Wigton, and that she cannot

positively say how long Lady Wigton and the deponent staid at Paris at that time, but thinks it was more than three months, and

under six months."—" Depones, that during the time Lady Wigton and the deponent were at Paris, the deponent did not see the child 361, B.

Sholto, nor the person to whose care she had been told Sholto was committed. And depones, that neither she nor Lady Wigton, to her

knowledge, had any address or direction, by which they might find out the house where Sholto was; but, considering Lady Jane's inti-

macy with Lady Wigton, she believes that Lady Wigton might have had such an address, though she never told the deponent of it, and

for what the deponent knows, Lady Wigton might have seen Sholto, as she went sometimes out without the deponent's knowing where

she went."

Baron MacElligot, after saying he came to Reims, and was godfather to the defender, depones, " That he cannot recollect how long he 363, G.

staid at Reims after the baptism: that he knows he went from thence to Paris with Sir John Stewart,—but does not recollect the month:

" that

354. " that he thinks he, the deponent, remained indisposed at Paris a considerable time: that he does not recollect how long Sir John staid at Paris, but thinks he left it before him, the deponent: that, as much as he can recollect, Sir John's reason for going to Paris was to see his other child: that he believes Sir John and he did lodge together in the same hotel: that he cannot recollect where that hotel was: that he thinks they saw one another frequently during Sir John's stay: that Sir John, when in Paris, did speak to the deponent of his other son there, and said, to the best of his, the deponent's memory, that he was upon the mending hand: that he does not recollect to have been informed by Sir John where the child was, or in whose care: that, to the best of his memory, *the reason of his never going to see the child, was his, the deponent's, indisposition*: that he does know, to the best of his memory, that Sir John told him he went to see a child that he had at Paris, or in the neighbourhood of it: that he does not remember to have heard where the child was, or who went along with Sir John.

Purf. pr. 343, F. Mrs. Greig, who was abroad with Lady Wigton as her maid, depones, " That when she was at Reims, she heard that Sholto, Lady Jane's youngest son, was so tender upon the delivery, that he was immediately baptised upon his coming to the world; for that she was informed the French midwives have liberty from the priests to baptise children in such a case. And depones, that she did not enquire whether the midwife was a man midwife or a woman: and depones, that she heard that the said child was sent to the country in the neighbourhood of Paris, for his health, and was under the care of the surgeon who had attended on Lady Jane at her delivery, and that the said surgeon gave accounts to Colonel Stewart, from time to time, of the state of the child's health. Depones, that she, the deponent, heard Lady Wigton, when at Reims, say to Lady Jane Douglas, that she was going to Paris, and as soon as she was able, *she would go and see Sholto, and Lady Jane begged of her that she would write her a particular account how he was, and how he was taken care of*, for that he was so weakly and tender, that she durst not even hope that he would live. Depones, that she does not remember to have heard of the address, directing to where Sholto was, nor did the deponent ever ask it, but did not make any doubt but Lady Wigton had an address, as without that she could not promise to see him."

Def. pr. 368, D. Isobel Walker depones, " That she has frequently heard Lady Jane and Sir John talk of the man-midwife, or doctor, who had brought Lady Jane to-bed, and had the charge of Sholto, and knows, that when they were at Reims, there were letters came frequently, once
" every

“ every fortnight at least, from that doctor, addressed to Sir John, giving account of Sholto, and that Lady Jane was in use to read and explain these letters to the deponent; and that my Lady and Sir John were always anxious to hear about the child, as he was very tender.”

Lady Rutledge depones, “ That she knows, that Lady Jane had great uneasiness, on account of her second son, because she received no news about him, and that she sent Mr. Stewart, her husband, to the post two or three different times, while the deponent was visiting in her house, to know if there was letters there; and that the fourth time Mr. Stewart returned with a letter, exclaiming for joy, and saying in English, Good news. Depones, That she heard this letter read by Mr. Stewart; that she does not remember all the contents of this letter, but the substance was near to what follows: *your child has been very bad in getting out a tooth, but, God be thanked, now he is rid of the affair for this time.*” Def. pr. 610, A.

Sir John Stewart's account of Sholto in his declaration is as follows: “ That upon Lady Jane's being delivered of two sons, one of them, the youngest, was so very weak and puny, that Pierre La Marre said, the best chance for his living was the sending him to the country, where he knew of an excellent nurse in a village on the road to Amiens, the name of which the declarant cannot recollect; and that accordingly that night, or next morning, Pierre La Marre and the nurse did carry away the child to the village, where it continued for 16 months. And being interrogate, declares, that he remembers the village was about two or three leagues from Paris.” Decl. p. 9. B.
Ser. p. 36, A.
Pur. pr. 255,
L. p. 442. F.

It is in proof, that Sir John made sundry visits to the child, while at this village; and particularly, one from Dammartin in August 1748; another from Reims in October that year; and a third from Reims in summer 1749.

Mrs. Hewit, in her letter 12th August 1748, to the servant-maids, from Dammartin, says, “ Mr. Stewart is seeing him (*i. e.* Sholto) just now, and I got a letter this day, telling, he hopes he will do very well, and that the nurse is the most careful woman he ever saw, and that he is now quite content to leave him with her.”

Mrs. Hewit depones, “ That they left the youngest, on account of its weak state at Paris, under the care of the manmidwife, who got a faithful nurse to him, under whose care he grew much stronger.” Ser. p. 12.

She further adds, “ That he was suckled for sixteen months.” Examined afterwards in the cause, she depones, “ That next day after Lady Jane's delivery, Sir John and the man-midwife went to the country, and found an extreme good nurse, whom they brought to Paris alongst with them, and Lady Jane pressed her to continue and nurse” Pur. p. 255, C.

“ nurse the child Sholto ; but she absolutely refusing to leave her own
 “ house, Lady Jane at last agreed to allow her to carry the child with
 “ her to the country, which she did, and he continued there until he
 “ was weaned.”

Purf. pr. 244,
 D.

—245, E.

—I.

—H.

As to the manner and time of bringing him from the nurse, Sir John Stewart depones, “ That, some time in the year 1749, after Lady Jane and the deponent had got a loan of some money from the Earl of Morton, for which a bond was granted.—Lady Jane and he came from Reims to Paris in a machine belonging to Sir Walter Rutledge, and that there was no other person in company except Mrs. Hewit, and Sir Walter’s servant, who drove the chaise ; and that the intention of that journey was singly to bring the second boy from nurse ; and the deponent cannot recollect how many days they were upon the journey from Reims to Paris. Depones, “ that, when the deponent and Lady Jane arrived at Paris, they put up at a lodging-house, but, in what street, or in what quarter of the town this house was, the deponent cannot recollect ; nor did he attend to the persons in the house, so as to describe them ; nor does he know whether it was a man or a woman, or both, that kept the house, nor what was their names, nor whether it was a house much or little frequented. And being further interrogate, depones, “ That the deponent was not recommended to this lodging-house, but that having left the machine without the town, because the driver did not know the streets, they called a hackney-coach, and ordered the coachman to drive them to a house where they could lodge ; and he accordingly drove them to the house above mentioned ;—that “ the deponent and Lady Jane intended to stay only one night at Paris, but she was so fatigued with her journey, that they continued, to the best of the deponent’s remembrance, three days at this house, and then the deponent, Lady Jane, Mrs. Hewit, and Pierre La Marre the man-midwife, set out in a coach to bring the child ; but Lady Jane, by the jolting of the coach, was so distressed with a head-ach, that the deponent was obliged to leave her at another house, with Mrs. Hewit to take care of her ; and the deponent and La Marre proceeded to the village where the child was, and brought him back to the house where Lady Jane was. Depones, that, previous to Lady Jane’s leaving the first house, Lady Jane was distressed with a head-ach, and that it had not quite left her when she set out. Depones, that the deponent cannot recollect the name of the village where the child was at nurse, but that it was but a little distance from Paris.—Depones, that, as Pierre La Marre directed the coachman where to drive in going to the village for the younger child, “ the deponent does not know in what quarter of Paris the house was “ where

“ where Lady Jane and Mrs. Hewit were left, as already deposed to.
 “ Depones, that the deponent cannot recollect any particular with re-
 “ spect to the persons who kept this second house, more than as to
 “ those who kept the former, and that he only lodged there one night,
 “ and next morning set out for Reims. Depones, that, when the de-^{Purs. pr. 247,}
 “ ponent and Pierre La Marre brought Sholto from the village, a wo-^{G.}
 “ man came along to the house where Lady Jane had been left, and,
 “ after delivering the child, immediately went away, but whether it
 “ was the nurse herself, or another woman, the deponent does not remem-
 “ ber, nor does he recollect whether the nurse had a husband living
 “ with her, but thinks he saw some children about the house. De-
 “ pones, that the house where the deponent and Pierre La Marre
 “ found the child, was the same house where the deponent formerly
 “ saw the child, in a visit in 1748, from Dammartin, to enquire after
 “ the child. Depones, that the deponent having come from Reims to
 “ Paris at a former period, in company, as he thinks, with baron
 “ MacElligot and John Hay, he thinks, though he is not positive, he
 “ also paid a visit to the child at the same village at that time. De-
 “ pones, that he does not recollect the name of the nurse.—Depones, that—248, B.
 “ he does not recollect what cloaths the child had on, nor if any cloaths
 “ was brought alongst with him; but that the money, for maintain-
 “ ing and cloathing the child, was given to Pierre La Marre, who set-
 “ tled with the nurse to her satisfaction. Depones, that, when the de-
 “ ponent went from Dammartin to visit the child, he had a distinct di-
 “ rection to the village, and he is not positive whether Pierre La Marre
 “ went with him at that time or not.—Depones, that the deponent did—249, H.
 “ carry the youngest child at this time with him from Paris to Reims,
 “ but does not recollect in what manner the child was dressed; that
 “ the child had fair hair, blue eyes, and remarkably like his mother
 “ Lady Jane. Depones, that the deponent at this time left Paris with
 “ Lady Jane, Mrs. Hewit, and the child; that they set out in a hack-
 “ ney-coach, and went to the inn, where they had left Sir Walter
 “ Rutledge’s machine, and in it proceeded directly to Reims; only
 “ the deponent is not positive but they may have stopped and visited
 “ Mr. Leslie at Villa Cotre, as he remembers that either on that or o-
 “ ther occasions he was in use to visit him; and the deponent does not
 “ recollect the length of the journey they made the first day, nor the
 “ number of days they were upon the road, though he thinks they did
 “ not travel very quick; as to the best of his remembrance, they were
 “ drawn by Sir Walter Rutledge’s horses.—Depones, that it was to—250, D.
 “ wards the end of the year when they returned to Reims, though the
 “ deponent is not positive as to the month, but, on recollection, thinks
 “ it was early in November. Depones, that Lady Jane and the de-
 “ ponent

“ deponent continued several days at Reims before they set out for Britain, though he does not remember the precise time.”

Serv. p. 13,
B.

“ Mrs. Hewit depones, That, when the second boy was about *sixteen months old*, the deponent went along with Sir John and Lady Jane, and brought him to Reims: That, about November 1749, they left Reims and returned to London with the children, where they arrived a week before Christmas. Examined as a witness in this cause,

Parf. pr. 257,
C.

“ she depones, That when the deponent set out from Reims to Paris, to bring home Sholto, the second son, as mentioned in her former deposition, they travelled in a machine and horses borrowed from Sir Walter Rutledge, which held them three very conveniently; and there was no other person in company except Sir Walter's servant, who drove them: That this happened about the end of October 1749; and the deponent thinks they were about three or four days upon the road. Depones, That, on their arrival at Paris, they put up at a private house, as the deponent thinks, in which there was a landlady and a maid, whose names the deponent does not remember, nor can she say in what part of Paris it was, or whether it was near to any of the places where they lodged when formerly at Paris; or whether the house was on the side of the river next Reims, or upon the opposite side: depones, That she heard no conversation upon the road, betwixt Lady Jane and Sir John, concerning what house they were to stop at at Paris, nor does she know any reason for their stopping at that house, further than that Sir John directed it, as she supposes. Depones, That the driver spoke French, but the deponent knows not what countryman he was; and that, when they arrived at Paris, he drove them directly to the above mentioned house; and the deponent supposes, that Sir John had formerly given him his directions, as she heard none given; and, upon their arrival at the house, they were carried into a very handsome room; and, in the deponent's apprehension, neither Sir John nor Lady Jane had any acquaintance of the landlady; and that they passed under the name of Mr. and Madam Stewart, and continued in that house three nights: That the fourth day Lady Jane having recovered of her fatigue, they resolved to set out to bring the second boy, and paid off their lodgings, Lady Jane informing the deponent, that it was their intention, after getting the child, to return directly to the place where the chaise and horses were put up at Paris, and so proceed to Reims; but at what particular place the chaise was, the deponent does not know. Depones, That a coach being hired, Sir John, Lady Jane, and the deponent and the man-midwife set out; but after they had gone a considerable way on the streets of Paris, Lady Jane was suddenly seized with a violent head-ach, which obliged them to stop the coach and carry her into a house, but whether it was a publick
“ house

" house or a private house, the deponent cannot say, only it was a to-
 " lerable good one; and Lady Jane having been obliged to go to bed,
 " the deponent continued with her, and Sir John and the man-mid-
 " wife proceeded in the coach, and, in some hours, returned with
 " Sholto and his nurse. Depones, that there was one woman who ap-
 " peared to be the mistress, and another the maid in the house, though
 " the first generally answered their call: That the deponent knows
 " none of their names, neither did the deponent make any enquiry at
 " Sir John or Lady Jane concerning the house, as she saw it was a dis-
 " creet house. Depones, That while Lady Jane and Sir John staid in
 " the house first mentioned, no person visited them; and Sir John at-
 " tended Lady Jane very close, going abroad now-and-then for half
 " an hour or thereby, and that very seldom. Depones, That Pierre
 " La Marre did not come to the house till the last day, just as they
 " were setting out; and the deponent is positive, that he could not be
 " there sooner; neither does she know how he was sent for, but sup-
 " poses that Sir John had either gone in quest of him himself, or sent
 " for him. Depones, That the money, for the lodging above men-
 " tioned, was paid by Sir John to the maid, the landlady herself not
 " being present. Depones, That on the same night the child was
 " brought to the house where Lady Jane had been carried, on account
 " of her sickness, the nurse was dismissed and paid by Sir John, and
 " the deponent took the care of the child who had been weaned about
 " a month before: That they continued all that night; and Sir John
 " next morning, after paying for their night's lodging, set out with
 " Lady Jane, the deponent, and the child, in a hackney-coach, to the
 " place where Sir Walter Rutledge's machine was put up; and the
 " horses being immediately yoked, they set out on their return to
 " Reims. Depones, That Sir John and Lady Jane went, at this house,
 " by the same names as they did at the former. Depones, That Lady
 " Jane was very subject to violent head-achs. Depones, That Sir John,
 " just before he left Reims in quest of the second boy, received the
 " 350 *l. Sterling* remitted to him by the Earl of Morton. Depones,
 " That, about this time Lady Jane had a suit of white riding-cloaths,
 " and also a gown of a kind of blue paduasoy, which she generally
 " wore, but cannot recollect in which of these two Lady Jane was dres-
 " sed in her journey from Reims to Paris; and thinks, though she is
 " not positive, that Sir John was dressed in a coat of Reims stuff, of a
 " mixed colour; and the deponent herself was dressed in a kind of chintz
 " gown which she generally wore. Depones, That they carried nothing
 " with them except a few linens, which were contained in a small box,
 " placed under Lady Jane's feet; neither did any of them get any
 " cloaths made at Paris at this time. Depones, That Sholto, the se-

"cond boy, had blue eyes, fair hair, and a fair complexion; and, when he was brought from the nursing, was cleanly and decently dressed in a kind of callico coats or frocks, as far as the deponent can recollect, and was carried in the same cloaths to Reims."

From these concurring proofs, it appears, that Sholto, during the first sixteen months after his birth, was nursed in the neighbourhood of Paris, under the inspection of La Marre; that he was originally very delicate and weak, but grew stronger under the care of a good nurse, and that he was taken away from her in the beginning of November 1749. A woman, answering in every particular to the description of this nurse, was discovered in the following accidental manner.—Some enquiry having been made for her at Menilmontain, Haute-borne, Belville, and other places in the neighbourhood of Paris, information was obtained, that a woman called Rousselet, living at a place called the Courtille, in the parish of St. Laurent, and who formerly lived at Menilmontain, had nursed several children, and particularly a child about the 1748 or 1749, who might possibly be the child of Lady Jane Douglas. Mr. Duvoidier one of the memorialist's French council, having applied to the curé of St. Laurent to send for this woman and examine her, the curé did accordingly send for her, and upon examination found, that the child which she had nursed belonged to other persons whom she named.

Upon her return to her own village, she happened to meet with a woman of the neighbourhood called *Garnier*, to whom she related her conversation with the curé, upon which Garnier put her in mind of a child which she, Garnier, had nursed about that time, and which might possibly be the child in question, but at the same time, from ignorance and simplicity, seemed to be unwilling that it should be known, lest she should be put to trouble. It happened, that this same woman Rousselet, had nursed a child to Mr. de Fleffelles, maître de requêtes, who having heard of the enquiry, and that Rousselet had been supposed to be the nurse, took a curiosity to examine her about the affair, and having sent for her soon after the above conversation with Garnier, she told Mr. de Fleffelles, that she herself was not the person, but that a woman called Garnier in her neighbourhood, had nursed a child which seemed to answer the description.—Garnier was next sent for by Mr. de Fleffelles, to whom she related the circumstances, which she has since done upon oath, of a child received by her from Pierre La Marre, which was a twin, and belonged to strangers; and Mr. de Fleffelles, made a discovery of the affair to Mr. Duvoidier.

These particulars are proved by the oath of Rousselet, a witness adduced for the pursuers, as well as by Garnier herself, a witness for

for both parties. Madame Garnier, examined in April 1765, depones,
 " That it consists with the deponent's knowledge, that the curate of ^{Purf. pr. 979,}
 " St. Laurent two years ago, more or less, sent for Madame Rousselet, ^{B.}
 " who believing that it was in relation to an information in regard
 " to her daughter, proposed to the deponent, to accompany her to the
 " curate's house, which the deponent consented to; but Madame
 " Rousselet went alone: That about two or three days afterwards,
 " Madame Rousselet told the deponent, that the curate had asked her,
 " If she had not nursed a stranger child? And that the curate had
 " recommended to her to tell the truth; and that Madame Rousselet
 " told the curate, that she had not, but that she had nursed the
 " daughter of Madame de Fleffelles, and a child of Madame Deguiene.
 " Depones, that Madame Rousselet did not tell the deponent who it
 " was that had engaged the curate to put these questions to the said
 " Madame Rousselet. Depones, that Madame Rousselet did not tell
 " the deponent that she had spoke of her to the curate; but that Ma-
 " dame Rousselet, in repeating to the deponent this conversation of
 " the curate, told the deponent, that she had said to the curate, that
 " she did not know who had nursed this stranger child; but she said
 " to the deponent on that occasion, that it might well be the child
 " whom the deponent had nursed on the road of Menilmontain; to
 " which the deponent answered, that Madame Rousselet had no more
 " to do but to give out the deponent as the nurse; and that if any
 " one came to make enquiries on that subject, the deponent would
 " tell what she knew of it. Depones, that two or three days after-
 " wards, Madame Rousselet told the deponent, that Madame de Flef-
 " felles had caused her come to her house, and had asked her, If it
 " was she who had nursed that stranger child? To which she answer-
 " ed, that it was not she, but that she knew the person who had nursed
 " him; saying, at the same time, that that person was apprehensive
 " of some affair on that subject: That then Madame Fleffelles assured
 " her, that she had nothing to fear; upon which Madame Rousselet
 " had informed her of the deponent; and Madame de Fleffelles did
 " thereupon beg Madame Rousselet to cause the deponent come to
 " Madame de Fleffelles house: That after this conversation, the depo-
 " nent did not go to Madame de Fleffelles that day; but next day
 " Madame de Fleffelles sent a servant to seek the deponent: That then
 " the deponent went to Madame de Fleffelles house with the servant,
 " and with Madame Rousselet: That upon this occasion the deponent
 " recounted the story of the said child, whom she had received from
 " the foresaid La Marre, in the same manner as she has recounted the
 " same in her former deposition. Depones, that when Madame Rouf-
 " selet repeated to the deponent the foresaid conversation of the cu-
 " rate,

“ rate, she did not tell the deponent that there had been any men-
 “ tion of Pierre La Marre, and did not speak of the said Pierre La
 “ Marre to the deponent. Depones, that it was the deponent who
 “ then spoke to Madame Rousselet of Pierre La Marre, and who also
 “ mentioned, that the child whom she had nursed was a twin; but
 “ that Madame Rousselet did not tell the deponent, so far as she can
 “ remember, that there had been any mention of a twin in the cu-
 “ rate’s conversation: That the deponent did not hear at that time,
 “ nor at any time, from Madame Rousselet, that there was a great suc-
 “ cession in question. Depones, that neither in the conversation with
 “ Madame de Fleffelles, which the deponent has just mentioned, nor
 “ in the conversation with the gentleman, to whose house the depo-
 “ nent went after the conversation with Madame de Fleffelles, as she
 “ has mentioned in her former deposition, was any thing taken in
 “ writing of what the deponent said, at least she did not see it.

Purs. pr. 981,
 F.

Madame Rousselet depones, “ That she has been acquainted with
 “ Madame Garnier, milk-woman at the Courtille, for ten or eleven
 “ years past; and since the deponent became acquainted with the said
 “ Madame Garnier she has been much connected with her, because they
 “ went together to seek their merchandize. Depones, that she has
 “ been neighbour of Madame Garnier at the Courtille since the said Ma-
 “ dame Garnier came to dwell there, that is to say, for about these
 “ seven or eight years past, and that their houses are opposite to each
 “ other. Depones, that she had no personal knowledge of any foster-
 “ child which Madame Garnier had before she came to the Courtille.
 “ Depones, that Madame Garnier and the deponent have been in use
 “ to see each other every day since Madame Garnier came to the Cour-
 “ tille. Depones, that in the first year after Madame Garnier came to
 “ dwell at the Courtille, she (Madame Garnier) told the deponent se-
 “ veral times, that she had nursed a boy who had been brought to
 “ her at eight o’clock in the evening, by the light of torches; that
 “ there were two stranger gentlemen who had come several times
 “ to see the child; that Madame Garnier did not understand the lan-
 “ guage of these gentlemen, but that he who had brought the child
 “ explained to her what these gentlemen said; that after some time
 “ they took away the said child from Madame Garnier, telling her,
 “ that the child was not to remain in Paris, but to go further off.
 “ The deponent adds, that Madame Garnier told the deponent, that
 “ she did not know to whom this child belonged, or what was become
 “ of him. Depones, that Madame Garnier did not tell the deponent
 “ the name of him who brought the child, nor of what business or pro-
 “ fession he was. Depones, that, so far as she can remember, this is
 “ all the conversation which passed on the subject of the said child at
 “ the time foresaid between Madame Garnier and the deponent. Depones,
 “ that

" that there was no other conversation between them on this subject
 " until the beginning of this affair. Depones, that it is about three years
 " since the curate of St. Lawrent sent to seek the deponent; that the
 " deponent went to the curate's house, and the curate recommending
 " strongly to her to tell the truth, put seventeen questions to her,
 " which he had in writing, on the subject of a child of strangers;
 " that the deponent remembers, that, in this conversation, the curate
 " named to her one Pierre La Marre; the deponent believes that the
 " curate spoke to her of the said Pierre La Marre, as being the person
 " who had placed the said child at nurse, but she does not remember
 " that the curate told her of what profession the said Pierre La Marre
 " was. Depones, that the deponent gave an account to the curate, in
 " this conversation, of the children whom she had nursed, and of
 " the places where she had gone to get them, as the deponent knew
 " the fathers and mothers of all the children whom she had nursed.
 " Depones, that she nursed several children at Menilmontain, and at
 " Belleville; that she dwelt seven years at Menilmontain, and there-
 " after went to dwell at Belleville, where she remained eight years,
 " and after that she came to the Courtille, where she has dwelt these
 " fifteen years. Depones, that in the aforesaid conversation, the curate
 " put in writing what the deponent had said on each article. Depones,
 " that the deponent did not indicate to the curate any one as the per-
 " son who might have been the nurse of the stranger child, and that
 " she did not speak to the said curate of Madame Garnier. Depones,
 " that the deponent did not know at whose desire the curate sent for
 " the deponent to put such questions to her. Depones, that before this
 " conversation with the curate, and about five or six years ago, there
 " came two young gentlemen to the deponent's house, two or three
 " times, but not in the same year, to ask the deponent if she had been
 " the nurse of a stranger child; and that the deponent having given an
 " account of all those whom she had nursed, and of the places where
 " she had received them, they told her, that she was not the nurse of
 " the child whom they were seeking; and added, that it was so much
 " the worse for the deponent, because they might have done good to
 " her on account of that child. Depones, that these two gentlemen
 " spoke good French, and not like foreigners. Depones, that
 " these two gentlemen told the deponent, that they had been mak-
 " ing researches at Belleville, and at Menilmontain, where they
 " had learned that the deponent had nursed several children.
 " Depones, that she does not know for whom these gentlemen in-
 " terested themselves. Depones, that they asked the deponent if she
 " knew any nurses who had nursed children at Belleville, and
 " Menilmontain at the same time with the deponent? To which

“ the deponent answered, That she had known some, but that they
 “ were all removed. Depones, that the deponent did not speak at
 “ that time to Madame Garnier of the visits of these two gentlemen.
 “ Depones, That after the said conversation with the curate, the depo-
 “ nent saw Madame Garnier that same day, and recounted to her what
 “ had passed before the curate; the deponent added, that for several
 “ years they had been seeking for the nurse of this child; and that
 “ two gentlemen had been at the deponent’s house on that subject se-
 “ veral years before. That then Madame Garnier asked the deponent,
 “ if she did not remember a child, which she (Madame Garnier) had
 “ nursed, and of whom she had spoke to the deponent several years a-
 “ go, as they were going to seek their merchandize at the market-
 “ place; that upon this occasion, Madame Garnier added, that she
 “ had kept the said child eighteen months: that the deponent answered,
 “ that she remembered very well what Madame Garnier had told her
 “ with regard to this child, and that if she nursed the child well, she
 “ had nothing to fear, but that Madame Garnier, probably apprehend-
 “ ing something, was not willing that the deponent should declare
 “ her as the nurse of this child. Depones, That in this Conversation
 “ Madame Garnier did not speak to the deponent of Pierre La Marre,
 “ nor that the child of whom she had had the charge was a twin.
 “ Depones, that two or three days after this conversation with Ma-
 “ dame Garnier, Monsieur de Fleffelles having sent for the deponent,
 “ she went to his house, and he asked her, if she knew any one who
 “ had nursed a Scotch child? To which the deponent answered, That
 “ she knew a woman who had nursed a child, which she believed was
 “ a stranger, because the gentleman who came to see that child, while
 “ he was at nurse, spoke a language which she (Madam Garnier) did
 “ not understand, and that he who accompanied them, and who had
 “ brought the child, explained what they said; but the deponent added
 “ to Monsieur Fleffelles, that this woman was not willing she should
 “ be declared, whereupon Monsieur De Fleffelles said to the deponent,
 “ that there was nothing to fear, and that she behoved to bring that
 “ woman to his house: that the deponent went that same day to Ma-
 “ dame Garnier’s house, who at first would not go to Monsieur de
 “ Fleffelles, whereupon the deponent said to her, that there was no-
 “ thing to fear, providing she told the truth: that, however, she did
 “ not go that day, but next day Monsieur de Fleffelles sent a servant to
 “ the deponent to tell her to bring Madame Garnier, and that on the
 “ day following, the deponent and Madame Garnier went to Madame
 “ de Fleffelles’s house: That then Monsieur and Madame de Fleffelles put
 “ many questions to Madame Garnier, on the subject of that stranger
 “ child whom she had nursed; and after Madame Garnier had made
 “ answers

" answers to these questions, Monsieur Fleffelles sent a servant who
 " conducted Madame Garnier and the deponent to the house of an ad-
 " vocate, of whom the deponent neither knows the name nor the a-
 " bode. Depones, That in this conversation with Monsieur and Ma-
 " dame de Fleffelles, Madame Garnier spoke of Pierre La Marre before
 " Monsieur and Madame de Fleffelles made mention of him, but the
 " deponent does not remember what Madame Garnier said on the sub-
 " ject of the said Pierre La Marre. Depones, That she does not re-
 " member if in this conversation there was any mention of twins.
 " Depones, That when they entered into the house of the said advocate,
 " he addressed himself first to the deponent, saying to her, " It is a
 " long time that they have been in search of you:" whereupon the
 " deponent said, That he must address himself to Madame Garnier;
 " that then the said advocate put questions to Madame Garnier
 " on the subject of the said child, and found her answers very just,
 " and very much to the purpose. Depones, That she does not re-
 " member, that in the conversation, in the house of the advocate,
 " there was any mention of Pierre La Marre, nor of twins. Depones,
 " That since that time, gentlemen of both sides have come to the de-
 " ponent's house to speak to her of this affair, but that the deponent
 " has not spoke to Madame Garnier, nor to her husband of these vi-
 " sits. Depones, That since this conversation in the house of the ad-
 " vocate, the deponent has not conversed with Madame Garnier on
 " the subject of this affair, and has not spoke to her of it at all, ex-
 " cept that upon Sunday last, Madame Garnier told the deponent,
 " that she had been examined upon oath last Saturday. Depones,
 " That Madame Garnier then told the deponent a part of what she
 " had deponed, but that the deponent gave no attention to it."

Here your Lordships will observe, that the capital circumstances of
 this affair are related by these two women to Mr. and Madame Flef-
 felles, before any of those acting for the defender had the least intelli-
 gence of them; and Garnier relates these circumstances without any
 thing to lead or prompt her, and without being under the smallest
 temptation to tell a falsehood.

With respect to the affair itself, her deposition is in these words: de-^{Def. pr. 554,}
 pones, " That, in the year 1747, 48, and 49, she lived at la Haute-^{A.}
 " borne on the road to Menilmontain, in a house belonging to the de-
 " ceased M. Belleville, a gardener, living near to Pincourt, in the pa-
 " rish of St. Marguerite. Depones, that, at that time, she nursed a
 " male child upon the milk of one of her children, called Jerome.
 " Depones, that she received the child from M. Pierre La Marre, man-
 " midwife, and that she kept it eighteen months. Depones, that,
 " while the child was with the deponent, she saw two stranger gentle-
 " men

“ men who came twice to her house to see the child. Depones, that
 “ when the child was brought to her, he was newly born, and even
 “ though he had been three or four days old, yet still he was a new-
 “ born child ; that he was very weakly and so delicate, that the depo-
 “ nent had little hopes of bringing him up ; that the deponent having
 “ taken notice of his weakness to M. de La Marre, he answered, that he
 “ could not be very strong, as he was a twin. Depones, that M. de
 “ La Marre, from whom the deponent had got the child, came fre-
 “ quently to see him, but the deponent never carried the child to M.
 “ de La Marre’s house. Depones, that she did not know whether the
 “ child belonged to persons of condition, but that M. de La Marre al-
 “ ways told her, that, if she could bring him up, she would be re-
 “ warded for it. Depones, that, from the child’s dress, she imagined
 “ he was not a child belonging to this country, as his cloaths, (*langer*
 “ *et hardes*,) were not made after the manner of this country, being
 “ quilted, and after the English mode, and the head-dress and caps
 “ being edged with lace, which was not of this country, and which
 “ she believes to have been English. Depones, that having nursed
 “ a great number of children, she cannot remember of what com-
 “ plexion the child was, of whom she is speaking. Depones, that the
 “ child had not the small-pox while with her, and that she does not
 “ remember that he had any mark of them. Depones, that, when
 “ they took away the child, they told her she ought not to vex her-
 “ self about it ; that it was not with any intention to place the child
 “ elsewhere ; that he was not to remain at Paris, but was going at
 “ some distance. Depones, that, when the two gentlemen, of whom
 “ she has spoke, came to see the child at her house, she had some idea
 “ that one of the two might be the father of the child, seeing they re-
 “ commended to her to take great care of it ; that these two gentle-
 “ men spoke to her in French, but with a foreign accent ; but as they
 “ did not understand the deponent’s answer, there was a third gentle-
 “ man who explained to them what the deponent said. Depones, that,
 “ when M. de La Marre brought the child to the deponent’s house, he
 “ was accompanied by an aged lady, who was in the coach with him,
 “ but did not come out, and who the deponent only saw through the
 “ coach-door in going to light M. de La Marre along with her sister-
 “ in-law. Depones, that, three or four days before the child was
 “ brought to the deponent’s, she was acquainted of it, and an agree-
 “ ment made with her to take it ; that M. de La Marre being in quest
 “ of a nurse, and having seen the deponent pass by with her child, he
 “ went into the inn, at the sign of the Grand Louis, in the deponent’s
 “ neighbourhood, and in the parish of St. Marguerite, which was kept
 “ at that time by Mr. Laurent, who is since dead, of whom he asked

" if he could have the deponent for a nurse ? that upon this the Sieur
 " Laurent's servant came to bring the deponent, who went to the inn
 " to speak to M. de La Marre, whom she did not know at that time,
 " and who came along with the deponent to her house to see her, the
 " deponent's child ; and it was on this occasion that he made the a-
 " greement with the deponent. Depones, that she does not recollect
 " at what season of the year this child was brought to the deponent,
 " but that she knows her own child Jerome was then six months, or
 " six months and a half old, though she cannot tell precisely his age.
 " Depones, that M. de La Marre came often to the deponent's house,
 " but she never saw him in his own house ; but adds, that one time the
 " child being ill, she went to M. de La Marre's house, and not finding
 " him at home, she spoke to a person of the house, and desired him
 " to tell M. de La Marre to come and see her à la Haute-borne, hav-
 " ing something to say to him ; that accordingly three or four hours
 " afterwards the said M. de La Marre came to the deponent's house.
 " Depones, that she does not recollect precisely where M. de La Marre
 " lived ; that he had left his address with the deponent, that she
 " might give him notice in case the child should be taken ill ; and that
 " he lived à la Butte St. Rock. Depones, that M. de La Marre always
 " paid her to the very last, her monthly fees as the nurse. Depones,
 " that there never was any woman came from M. de La Marre to the
 " deponent's house to see the child, but that he came himself alone,
 " and that it was to him the deponent gave back the child at the end
 " of eighteen months. Interrogated for the pursuers, depones, that the
 " deponent's husband hath always been a quarrier by profession ; that,
 " in the 1748, 1749, the deponent's sister-in-law, Madame Hercheman,
 " lived in the same house, the storey above the deponent. Depones,
 " that M. de La Marre never told the deponent to whom the
 " child belonged, of whom she had the care, and that she never
 " knew either its christian name or surname. Depones, that there
 " never was any lady came to see her during all the time the
 " deponent nursed this child. Depones, that she received ten
 " crowns a-month for nursing the child, (that is to say, thirty
 " livres). Depones, that, when the child was entrusted to her care,
 " he was very poor and weakly, but was not sick, nor indeed was he
 " much so during all the time the deponent kept him ; does not re-
 " member at what season of the year she gave back the child, only
 " knows that she kept him eighteen months ; and that when M. de la
 " Marre came to take him back at the end of that time, he was a-
 " lone. Depones, that after she got the child he recruited, by de-
 " grees, by good care. Depones, that it was in the afternoon M. de
 " la Marre came to take away the child. Depones, that the two

“ stranger gentlemen whom she spoke of, came but twice in all to her
 “ house ; that she believes, but cannot be positive, that the first time
 “ these two gentlemen came to her house, was two or three months,
 “ or thereabout, less or more, after she got the child, and that there
 “ was not any long interval betwixt the first and the second visit of
 “ these two stranger gentlemen ; that it might be about a month, less
 “ or more. Depones, that when the child was put into frocks, M. de
 “ la Marre furnished the same. Depones, that she never told any of
 “ her neighbours at that time that the child was a twin, and that she
 “ never spoke of it. Depones, that tho’ a recompence was promised
 “ her for nursing the child, she never received, nor asked for any.
 “ Depones, that she does not recollect neither the stature, nor age, nor
 “ figure of the two stranger gentlemen who came to see the child.
 “ Depones, that she never saw the said M. de la Marre any where after
 “ she gave him back the child. Depones, that when she went that one
 “ time to M. de la Marre’s house, she spoke to the person whom she met
 “ there, only at the door, and does not know even whether that person
 “ was one of his servants, nor whether the gate had a coach entry or not.
 “ Depones, that she does not recollect about what age M. de la Marre
 “ might be, nor his stature nor figure, nor even whether he was tall
 “ or little. Depones, that the third gentleman who was along with
 “ the two stranger gentlemen, and explained to them what the de-
 “ ponent said, was not M. de la Marre, but that she did not know
 “ him ; and that M. de la Marre never came along with them. De-
 “ pones, that the child was brought to her in the evening. Depones,
 “ that she weaned the child thirteen or fourteen months after she re-
 “ ceived him. Depones, that she was not told to what city or to
 “ what place the child was carried after he was taken away from the
 “ deponent. Depones, that it was never proposed to her, neither
 “ when the child was intrusted to her care, nor since, to go along with
 “ him to any place.”

Purs. pr. 974, C. Having again been adduced by the pursuers, an infinite variety of
 questions were put to her, with a view, no doubt, of teasing and per-
 plexing the poor woman ; but she adhered in every particular to her
 former deposition, and further deposed, That she was at that time a
 cow-keeper, or feeder of cows ; and that she at present follows the
 business of a milk-woman ;—that, during the time that she nursed
 the said child she was most connected with Madame Boucault : that
 soon after her marriage she worked with Madame Brigot, and was
 very intimate with her ; but that while the deponent nursed the
 foresaid child she did not work with Madame Brigot, and did not

see

see her so often as formerly. " Depones, after the deponent had received the said child from the hands of Monf. de la Marre, she did not continue to nurse her own child, Jerome, except for seven or eight days, in order to wean him by degrees; after which she sent and boarded him at Belleville, in the house of one Madame Bezangon, a washerwoman, deceased; and that she did this by the order of Mr. La Marre, who was afraid that she could not nurse him at the same time with her foster-child. Depones, that her own son Jerome was actually weaned before he was sent to Belleville, where he did not suck any more; that at the end of a fortnight, or three weeks, more or less, the deponent took him from Belleville, and brought him to her own house; that after this Mr. La Marre, seeing one day the child Jerome in the deponent's house, suspected that she was still giving him suck; whereupon the deponent let him see that he would not take the breast, to prove to him that he was entirely weaned. Depones, that she has said in her former deposition, that when La Marre committed to her charge the said foster-child, her own son Jerome was six months, or six months and a half old, she could not say exactly; that she has just now said that she kept in her own house her said child Jerome, during seven or eight days; that she has also just said, that then she sent her said child to Belleville, where he remained a fortnight or three weeks, more or less; from which it follows, that when the deponent's said child came back from Belleville to her own house, and was entirely weaned, his age then was six months, or six months and a half and seven or eight days, and a fortnight or three weeks, more or less. Depones, that it was Mr. La Marre who made the agreement with the deponent for the price of the months for nursing the child; and that it was at the time that the deponent was hired for nurse, and before the child was brought to her, that Pierre La Marre and she made the agreement for the price of the months. Depones, that she at first asked forty livres a month, but that La Marre answered her, that he was limited, and that he would give her no more than thirty livres, which the deponent accepted of. Depones, that La Marre came regularly every month to the deponent's house, to pay her the months. Adds, that Monsieur La Marre never asked a discharge, either from the deponent or her husband. Depones, that the deponent did not give any account to any of her relations or neighbours, in what manner she had received the said child. Depones, that the deponent did tell at the time to her sister-in-law, Madame Herchteman, and to Madame Boucault, that she had received the said child from the accoucheur Pierre La Marre. Depones, that while the deponent kept the said child, she did not mention Pierre La Marre.

“ Marre to any other persons ; but that after she had given him back,
 “ she named the said Pierre La Marre to Madame Rousselet, widow of
 “ Monsieur Rousselet, birdseller, of whom the deponent spoke above.
 “ Depones, that she did not often converse on the subject of the child
 “ with her parents or neighbours. Depones, that she remembers to
 “ have caused Madame Boucault remark one day, showing her the
 “ baskets of child-bed linen belonging to the child, that he had on
 “ his barrows some fringes, which she believes were English, but that
 “ she did not make this remark to any others. Depones, that Pierre
 “ La Marre gave the child's linen by inventory to the deponent, and
 “ that the deponent did then remark, that the barrows were not twilt-
 “ ed in the manner of this country, and that Pierre La Marre then
 “ told the deponent, that they were in the English fashion ; but that
 “ the deponent cannot give a description of what this English fashion
 “ was ; and that Monsieur La Marre did not speak to her of the laces,
 “ nor of the other small linen. Depones, that the deponent did not
 “ speak, so far as she can remember, to any others than to Madame
 “ Rousselet, of the recompence which had been promised her, if she
 “ could bring up the child ; and that she told Madame Rousselet, that
 “ she had not received any recompence. Depones, that she did not
 “ mention, as she thinks, to any of her relations or neighbours, that
 “ she had been told, when the child was taken away from her, that he
 “ was not to remain at Paris, but was to go further off. Depones,
 “ that there was no person present when Monsieur La Marre came to
 “ take away the child. Depones, that there was no body present at
 “ any of the visits which La Marre made to the deponent. Depones,
 “ that the deponent did not tell, at the time, to any of her relations
 “ or neighbours, that it was to Monsieur La Marre that she had de-
 “ livered the child, except to Madame Rousselet, to whom the depo-
 “ nent told it at the end of seven or eight months, or thereabouts.
 “ Depones, that Pierre La Marre told the deponent two or three times,
 “ that the child which he had intrusted to her was a twin, and that
 “ the twins were male children ; but he did not tell her which of the
 “ two was the eldest. Depones, that besides the frock which La
 “ Marre furnished the deponent for the child, as she has said in her
 “ former deposition, the said La Marre furnished her a second, because
 “ the first was too little, and this first remained with her when he
 “ brought the second. Depones, that when Monsieur La Marre
 “ brought the child, all the child-bed linen was in a box, before or
 “ behind the coach. Depones, that Monsieur La Marre did himself
 “ always bring all the things which the child had occasion for, during
 “ the whole time that he remained in the deponent's house. Depones,
 “ that the last frock which he brought to the child, and which he
 “ brought

" brought when he took him away, was of a linen-stuff, and that the
 " leading-strings were of silk, also white: that the deponent does not
 " remember how the child's head was dressed, but that he wore a cap,
 " she does not remember of what colour it was. Depones, that Mon-
 " sieur La Marre, when he made his visits to the deponent, was some-
 " times a-foot, and sometimes in a coach. Depones, that the depo-
 " nent had lately in her possession, a little bit of lace of a cap belong-
 " ing to the child, which remained with her: that she sought for it
 " to-day, but did not find it, and promises, that if she finds it she
 " will produce it to the commissioners. Depones, that this lace which
 " she had remaining, as she believes, was that which the deponent
 " called the English lace.—Depones, that it was in the deponent's own Purf. pr. 978,
 " house that she delivered the child to Monsieur La Marre. Depones, D.
 " that after she gave back the child to La Marre, she did not hear that
 " he ever came into the deponent's quarter. Depones, that at the first
 " time, when La Marre engaged the deponent, he told her his name,
 " Pierre La Marre, but not his profession, but that the deponent did
 " learn his profession afterwards. Depones, that La Marre did not at
 " that time tell the deponent, if the lady was already delivered. De-
 " pones, that before La Marre found the deponent at her own house,
 " and engaged her, as she has mentioned in her former deposition, he
 " sent to the deponent's house from the inn of the Grand Louis, and
 " did not find her; the deponent does not know if this happened two
 " or three days before he found her: the deponent does not remem-
 " ber which of the servants of the inn Monsieur La Marre sent to her
 " house; and that it was from one of the servants of the inn, whose
 " name the deponent does not remember, that she learned that Mon-
 " sieur La Marre had been seeking for her before he found her. De-
 " pones, that after the deponent left the Haute-borne, she went to
 " dwell at the Courtille, where she dwells at present. Depones, that
 " after the deponent had left the Haute-borne, her said sister-in-law
 " did no longer dwell in the same quarter with her."

Her husband, Nicolas Garnier deposes, " That in the years 1747, Def. pr. 558.
 " 1748, and 1749, he lived at the Haute-borne, upon the road to and
 " below Menilmontain. Depones, that at that time the deponent's
 " wife nursed a male child upon the milk of Jerome, his third son,
 " yet alive, that he was not at home when the child was brought, but
 " that his wife told him, at the time, that it was M. de La Marre,
 " man-midwife, accompanied by a lady who had brought that child.
 " Depones, That not being at home, during the day time, on account
 " of his work, he did not see two foreign gentlemen come to his house
 " to see that child, but that his wife told him at night, upon his re-
 " turn, that there had come two or three times two foreign gentle-

" men to see this child. Depones, That when the child was brought
 " to his house it was new born, very weak, very puny, and delicate.
 " Depones, That his wife told him at the time, that M. de La Marre
 " informed her, that this child was a twin, and that she should take
 " great care of it, not knowing whom she nursed, but that he did not
 " hear this said by any other person but by his wife; that his wife
 " told him at the time, that Monsieur de La Marre came several times
 " to see the child, but he, the deponent, being busy at his work, ne-
 " ver saw said Monsieur de La Marr; nor was he, the deponent, ever
 " in his house; that he never knew from whence that child came,
 " but from the linens which were very good, he conjectured that it was
 " a child of condition. Declares, That he remembers that this child was
 " very white in the face, but as to its eyes and features, he does not
 " remember them; that he did not know, when the child was taken a-
 " way, where they intended to carry him. Depones, That the child
 " staid in the deponent's house about eighteen months, perhaps fifteen
 " days more, or fifteen days less; that it was towards the end of sum-
 " mer, or the beginning of autumn, some months more or less, when the
 " child was brought to the deponent's house. Depones, that his wife
 " told him at the time, when she received payment of the month's
 " nursing, "Look, there's my child's month, which I have received."
 " Sometimes it was Monsieur de La Marre, and sometimes a lady
 " who brought this money. Depones, That he does not precisely re-
 " collect the season of the year the child was returned, but believes it
 " was towards the spring, as it was about eighteen months after, hav-
 " ing received him. Depones, That he did not hear to whom the
 " child was given.—Interrogated for the pursuers, depones, That when
 " this child was placed with the deponent's wife, their son Jerome was
 " about six months old, that he knew from his wife at the time, that
 " she had been bespoke by Monsieur de La Marre, some time before the
 " child was brought to her, that Monsieur de La Marre had seen the
 " deponent's wife when he hired her; does not know how long it was
 " before the child was brought. Depones, That although the child
 " was very weak, when the deponent's wife took charge of him he
 " grew stronger, after being nursed some time, and he did not know
 " the child was sick while it was in the deponent's house. Depones,
 " That he never himself saw any woman come to see the child, but he
 " knew from his wife that one came to see him, but does not know
 " how often. Depones, that the deponent's wife was paid ten crowns
 " a month; that he has no knowledge of any further reward having
 " been either promised or paid to his wife, and he believes if this had
 " been, she would have told him. Depones, That his wife never told
 " him that she had been in Monsieur La Marre's house, that she had
 " his

" his address, nor that she knew where he lived. Recollects that his
 " wife told him, the two strangers who came to see the child did not
 " speak the French well. Depones, That he did not hear his wife say,
 " either that it had been proposed to her to leave Paris or her house to
 " nurse the child elsewhere; that he does not know at what age the
 " child was weaned, but only, that it was before the child was taken
 " away; that he has no knowledge the child was sick when he was
 " weaned nor before; that he never knew, nor even asked who were
 " the child's father and mother, nor the place where he was born, nor
 " who it was that brought the mother to-bed. Depoues, that during
 " the whole time this child was in the deponent's house, the depo-
 " nent's sister (Madame Hercheman) lodged in the same house with
 " the deponent, one storey above, and that she lodged there two
 " years, or two years and an half. Depones, That about Whitfun-
 " day last year, as he believes, with respect to the time, there came
 " two stranger gentlemen to the deponent's house, to inform them-
 " selves of this affair; that the deponent's wife did not tell him, that
 " since that time or before, she had been sent for to any place on ac-
 " count of this affair."—This man was likewise re-examined by the
 pursuers, and depones, " That his son Jerome was six months of age, ^{Purf. pr. 971,}
 " a fortnight, more or less, when his mother weaned him, to take the ^{F.}
 " said foster-child."

The facts deposed to by Garnier and his wife, do not rest singly up-
 on their oaths. The capital circumstances are vouched by other per-
 sons who were acquainted with them, and lived in the neighbourhood
 at the time. Charlotte le Preux, the wife of Nicolas Boucault, depones, ^{Def. pr. 559,}
 " That she is acquainted with Mrs. Garnier, wife of Nicolas Garnier, ^{G.}
 " quarrier, residing at the Courtille, parish of St. Laurent, and that it
 " is about thirty years since she has been acquainted with her. De-
 " pones, That during the time the said Mrs. Garnier resided at the
 " Haute-borne, the deponent lodged in a house next adjacent to that
 " in which Madame Garnier dwelt. Depones, That the house the de-
 " ponent dwelt in at that time belonged to M. de St. Vaux, who dwelt
 " in it likewise. Depones, That she remembers that, at that time,
 " Mrs. Garnier nursed a male child upon the milk of her son Jerome,
 " which child the deponent saw the day after he was brought to Mrs.
 " Garnier, and that he was extremely weak, and of a brown colour,
 " appearing to be newly born. Depones, That one afternoon, being
 " in the house of the said Mrs. Garnier, she found there a man called
 " Pierre La Marre; to whom she observed, that the said child was ex-
 " tremely delicate; to which he answered, that when there were twins
 " they were not so strong as when there was only one. Depones, That
 " the said Pierre La Marre recommended the child to the said Mrs.
 " Garnier,

“ Garnier, desiring her to let him know in case he was sick ; upon
 “ which the said Mrs. Garnier having said, that she did not know
 “ where to find the said Pierre La Marre, he gave her his address,
 “ which the deponent saw him write in the house of the said Mrs.
 “ Garnier, and that she believes the address was either, A la Butte St.
 “ Roch, or, A l'Egout Monmartre ; adds, that she heard the said Mr.
 “ La Marre say, that his name was *La Marre*, and she has an idea
 “ that he likewise said he was called *Pierre*. Depones, That four or
 “ five days before Mrs. Garnier got this child to nurse, she told the
 “ deponent, that being at the door with her own child, two gentle-
 “ men passing by took notice of her child, and finding him in good
 “ condition, asked, whether she would undertake to nurse a child,
 “ when a lady, they mentioned, should be brought-to-bed : That they
 “ went into her house, made her undress her child, and having sa-
 “ tisfied themselves of his condition, persisted in their proposal : That
 “ she agreed to undertake to nurse the child, upon condition that her
 “ husband, to whom she would speak of it, should agree to it likewise :
 “ That she accordingly spoke of it to her husband, who gave her per-
 “ mission to undertake to nurse the child, and that next day, or two
 “ days after, these gentlemen having returned, gave her six livres of
 “ earnest, and agreed to allow her thirty livres a month, instead of
 “ forty livres that she demanded, telling her, at the same time, that
 “ they were confined as to the sum. Depones, That four or five days
 “ after, as she heard at the time from Mrs. Garnier, two gentle-
 “ men, or some people, came one evening to Mrs. Garnier's house in
 “ a coach, with flambeaux, bringing the child with them. Depones,
 “ That next day, the deponent passing by Mrs. Garnier's house, Mrs.
 “ Garnier called upon her and shewed her the child, telling her she
 “ had received him the night before in the evening. Depones, That it
 “ was Mr. La Marre, man-midwife, who paid the nurse her monthly
 “ wages for the child ; that she, the deponent, was once present at his
 “ paying the said Mrs. Garnier a month's wages, at the rate of 30
 “ livres, and that upon this occasion she asked him in jest, whether he gave
 “ as much money to every body ? to which he answered, that if he
 “ owed her (the deponent) as much, he would pay her. Depones,
 “ That she knows Mrs. Garnier nursed that child for 16 or 17 months,
 “ by which time he was able to walk by the help of leading-strings.
 “ Depones, That she observed, that the said child, when dressed, had
 “ fine lace, which was not in the fashion of Paris. Depones, That
 “ having asked at the said Mrs. Garnier, If she knew to whom this
 “ child belonged ? the said Mrs. Garnier told her at the time, that she
 “ knew neither his father nor mother, but only the man-midwife who
 “ paid her, and that there came gentlemen from time to time to see the
 “ child,

" child, but she did not know if any of them was his father. De-
 " pones, That Monsieur La Marre, in presence of the deponent, said to
 " Mrs. Garnier, *Take great care of this child, you little know whom you*
 " *nurse* ; but he did not tell her whose son he was. Depones, That at
 " that time, she saw Mrs. Garnier and the child every day. Depones,
 " That the child had swaddling-cloaths sewed in the English fashion,
 " folding down upon his breast, but she cannot recollect precisely the
 " form thereof. Depones, That she believed these cloaths to be in the
 " English fashion, because they were not in that of Paris, and because
 " some people who saw them said, they were in the English fashion.
 " Interrogated for the pursuers, depones, That she saw the said Mon-
 " sieur La Marre at the said Mrs. Garnier's house two or three times in
 " all. Depones, That she does not remember his figure, but only
 " that he appeared to her to be at that time about 40 years old. De-
 " pones, That she knows Monsieur La Marre sent people twice or thrice
 " a-week to see the child, and that she has heard from Mrs. Garnier,
 " that he came thither very often himself. Depones, That the first time
 " she saw Monsieur La Marre was, when he paid the first month of the
 " (child's) nursing. Depones, That having a mind one day to go in-
 " to Mrs. Garnier's house to see her; but, upon opening her door,
 " having observed three or four gentlemen, she shut the door again and
 " went away; that she returned thither in the evening, and having
 " said to Mrs. Garnier, that she had received a great visit that day;
 " the said Mrs. Garnier answered, that it was some gentlemen who
 " came to see the child; that she did not know, whether the father
 " was of the number; that they did not speak after the manner of
 " Paris; and that besides, not having understood them, she answered
 " always by yes and no. Depones, That at another time, she saw a single
 " gentleman walking in the garden opposite to Mrs. Garnier's house,
 " with the said Mrs. Garnier and the child, and that this gentleman
 " was a tall handsome man, who appeared to her to be about 50 years
 " of age. Depones, That she has heard Mrs. Garnier say, that there
 " came often gentlemen to see the child, sometimes in the morning,
 " sometimes in the evening, but that the deponent never saw any other
 " than those just mentioned. Depones, that Mrs. Garnier told her
 " at the time, that sometimes there came ladies to see the child, but
 " the deponent never saw any (ladies) nor did she even hear that there
 " had been one when the child was brought (to Mrs. Garnier.) De-
 " pones, that she had an idea, that when Mr. La Marre wrote his
 " address in the deponent's presence, in Mrs. Garnier's house, he put
 " down the name of Pierre, without mentioning therein his profession.
 " Depones, that she, the deponent, can read a little in printed books,
 " but that she can neither write, nor read writ. Depones, that this
 " address

" address, wrote by Mr. La Marre, was not read in Mrs. Garnier's
 " house, but that Mrs. Garnier got it read when she had occasion to
 " go to Mr. La Marre, on account of the child's illness. Depones,
 " that Mrs. Garnier did not tell the deponent, that she had been
 " more than once in Mr. La Marre's. Depones, that it consists with
 " her knowledge, that the day after the child was brought to Mrs.
 " Garnier, she sent her son Jerome to one of her relations in the
 " village of Belleville; that after fifteen days she took him back, and
 " kept him in her own house; that she offered him the breast, but
 " that he was already refused to it, and would not suck. Depones,
 " that this child Jerome was six months old when he was sent to Bel-
 " leville to be weaned; and that he was sent there by Mr. La Marre,
 " who said, that a cow had enough to do with her own calf, (*qu'une*
 " *vache avoit assez de son veau.*) Depones, that the deponent's
 " house, which was separated from that of Mrs. Garnier, by a wall
 " of about fifty foot long, formed the corner of the street St. Maur
 " at the Haute-borne, and the house of Mrs. Garnier formed the other
 " corner of the said street. Depones, that when the child above men-
 " tioned was brought to Mrs. Garnier's house, the woman called
 " Reine Garnier, her sister-in-law, dwelt in a room of the same house
 " with the said Mrs. Garnier, and remained there while the child was
 " there, about seven or eight months, though she cannot condescend
 " positively upon the length of time. Depones, that this house,
 " wherein Mrs. Garnier and her sister-in-law lived, when the said
 " child was brought her, was situated in the street St. Maur, and be-
 " longs to Mr. Maillard. Depones, that when Mrs. Garnier was
 " engaged to nurse that child, she lived in a different house, in
 " the same quarter of the Haute-borne, situated upon the road to Me-
 " nilmontain, and belonging to Mr. Belleville; but having removed
 " from thence, a short time before the child was brought her, she
 " lived at the time he was brought to her, in the foresaid house of
 " Mr. Maillard, street St. Maur. Depones, that these two houses
 " were about fifty foot distance the one from the other. Depones,
 " that she knows as she has just said, that Reine Garnier, sister-
 " in-law of Mrs. Garnier, lived in the house of Mr. Maillard, but
 " that she has no idea of her having lived in the house of Mr. Belle-
 " ville."

Madame Rousselet, whose deposition has already been recited, does
 also confirm the story, in some of the material particulars, which she
 heard from Madame Garnier long before the present action com-
 menced. Mr. Brigot, who was waiter to Mr. Laurent, inn-keeper at
 the sign of Louis the Great, at the Haute-borne, in the year 1748,
 Def. pr. 568, depones, " That he has heard sundry times speak of a Mr. La Marre,
 E. " and

" and has some idea to have seen him. Depones, that it was in the
 " summer-time that the said La Marre came with his friends to take
 " a refreshment in the inn of Mr. Laurent; that he cannot tell posi-
 " tively the time, but that it may be full 17 years ago."

The pursuers endeavour to show a contradiction in the evidence,
 by appealing to the deposition of Reine Garnier, the wife of Herche-
 man, who lived in the upper storey of the same house with Garnier
 and his wife, in 1748 and 1749. But the variations between her and
 the other witnesses are so extremely inconsiderable, that they tend to
 confirm, rather than to discredit their depositions, in the material cir-
 cumstances. She depones, " that in the years 1748 and 1749, she ^{Def pr. 565;}
 " lived at the Haute-borne, street St. Maur, in the parish of St. ^{C.}
 " Marguerite, below Menilmontain. Depones, that she knows that
 " at this time, her sister-in-law, Mrs. Garnier, had a child whom she
 " nursed upon Jerome Garnier, one of her childrens milk. Depones,
 " that she does not remember how old the child was when her sister-
 " in-law took charge of it, nor what condition it was in when brought
 " to her said sister-in-law. Depones, that she does not remember how
 " long said child remained in her sister's house, and that she did not
 " know that it was the child of a foreigner. Depones, that at this
 " time the deponent's sister-in-law lived likewise at the Haute-borne,
 " in the same house with the deponent and in the storey below. De-
 " pones, that she has seen said child at that time nursed by her sister-
 " in-law, and that he was puny and delicate, but not sick. Interro-
 " gated for the pursuers, depones, That when the child was brought
 " to her sister-in-law's house, she, the deponent, was there present;
 " and that it was at night, about nine or ten o'clock; and that he
 " was brought by a lady in a coach: that the lady was all alone with
 " the child, and that she spoke French: that the deponent does not
 " recollect the age, stature, nor figure of this lady. Depones, that
 " this same lady came every month, and it was she who paid the
 " nurse's monthly wages; and the deponent always, when she had
 " occasion to see said lady, saw her alone without any person accom-
 " panying her: that the deponent does not remember if her sister-in-
 " law had been bespoke before she took charge of the child; does not
 " remember in what season of the year the child was brought; but
 " she remembers that her sister-in-law's child, Jerome, was born in the
 " month of March: she does not know if her sister-in-law knew the
 " address of the person who gave her the child, nor whether she knew
 " the father and mother of said child; the deponent did not hear at
 " the time, that the child was a twin, or that it was not a twin. De-
 " pones, that she lodged during the two years 1748 and 1749, in the
 " same house with her sister-in-law: that she lived there when the
 " child

" child was brought to her sister-in-law, and she thinks it was in the
 " year 1748: that she does not remember in what season of the year
 " the child was returned, nor if he was then weaned: she recollects,
 " that when they came to her sister's house for the child when he was
 " taken away, her sister wept, saying, They have just now taken a-
 " way my little master from me; and does not know if it was a man
 " or a woman, or sundry persons, who came to take away the child,
 " because the deponent was not then in the house, and it was her
 " sister who told the deponent of it, at night when she returned home;
 " she does not remember, that her sister-in-law told her, that she had
 " accompanied the child. Depones, she remembers that the child
 " had fine linen when he was brought; does not know if, while the
 " child was at her sister-in-law's, and when he was put in robes, any
 " cloaths was brought to him; and that she did not hear at the time,
 " where the child was born: That at the time above mentioned, her
 " brother, the *Sieur le Garnier*, was a quarrier. Depones, that she
 " never heard any mention made of a *M. de La Marre*, nor of any
 " other gentleman, who came at that time to see the child, in her
 " sister-in-law's house. Depones, that at the time the deponent lived
 " in the above mentioned house, there was one *Mr. Dedet*, a gardener,
 " and his mother-in-law, who lived in the same house: That the said
 " gardener is dead, and does not know whether his step-mother is
 " alive or not: That said house belonged to a rope-maker, who lived
 " in *St. John's church-yard*, whose name she does not recollect. In-
 " terrogate for the defender, depones, she does not know if her sister-
 " in-law knew the names of the father and mother of this child; but
 " that she usually called him her, Little master."

Her non memini's with regard to *La Marre*, and the child being a
 twin, &c. are of no sort of consequence. She expressly says, that the
 child was *puny and delicate*, and that it was nursed on the milk of
Jerome. She says, that the child was brought in a coach by a lady,
 which is so far agreeable to the depositions of *Garnier* and his wife;
 that according to them, there was a lady in the coach with *La Marre*,
 and the witness has only forgot, that there was a gentleman along
 with the lady. She says also, that the monthly wages were paid by a
 lady. This is a fact which she had no particular access to know, and
 in which she is plainly mistaken. Your Lordships will observe, that
 though she lived under the same roof, she did not live in family with
Garnier, and therefore it is natural to suppose, that she may be in a
 mistake as to particulars, which she had no personal access to know.
 Another trifling variation appears with regard to the house in which
 they lived in at that time. *Hercheman* says, they lived in one house,
 and *Garnier* says they lived in another. But the real fact is explain-
 ed

ed by Madame Boucault, and others, that they lived first in a house belonging to Belleville, a gardener, standing on the road to Menilmontain, and afterwards, about the time of receiving this child, removed to another house, belonging to one Maillard, situated only fifty feet distant from the other. Def. pr. 563, A.

It was further noticed, that the place of residence of this nurse, and her husband, did not entirely agree with some passages of the evidence, in relation to the village where Sholto was said to have been nursed; that Miss Primrose and Lady Rutledge, and even Menager, seemed to point at *Menilmontain*; whereas, the nurse Garnier, lived at Haute-borne, which is only on the road to Menilmontain, between Paris and that village.

None of the witnesses fix positively on Menilmontain, and though it is true, that Miss Primrose, on hearing the word repeated; was of opinion, that it was the very place she had heard Lady Jane speak of; yet this is easily accounted for, when it is considered, that the Haute-borne itself, is composed only of a few straggling houses, in the sight of, and on the road to, Menilmontain, a considerable village, and within half an English mile of it, and the appellation under which it is always spoke of and known, is *Haute-borne, on the road to Menilmontain*, and sometimes the whole of these straggling houses on that quarter, are known by the general name of *Menilmontain*. Answer.

The story in its material parts is well vouched, and the circumstances are so striking, that the application of them to Sholto cannot be doubted. Your Lordships have 1mo, a new born-child given to this woman by Pierre La Marre, and the same La Marre paying the months. 2do, A *twin* child, both twins male. 3tio, A *foreign* child. 4to, This child nursed in 1748 and 1749. 5to, Taken away in order to be carried to a distance. 6to, Two gentlemen visiting the child, one who spoke with a foreign accent, and supposed to have been the father, and whose description, as given by Boucault, answers exactly to Sir John Stewart. 7mo, The child remarkably puny and weak when first brought, but growing stronger by degrees under the care of a good nurse, and not unhealthy or indisposed, further than having two or three slight fits of sickness, while in the custody of the nurse. Last-ly, the circumstance of the child's not speaking, agrees also exactly to Sholto, as it appears from the oaths of several witnesses examined in England, that he could not articulate a word till after he was brought to London. Def. pr. 564, E.

The pursuers, according to custom, advanced two different and contradictory suppositions with regard to Garnier; 1mo, They said that she and her husband had invented the whole story, or at least the material OBJEC- TIONS TO GARNIER.

terial parts of it, in order, that it might apply to Sholto. 2do, They insisted, that the circumstances told by them did not apply to Sholto, and a variety of particulars were pointed out, in which the history of Garnier and that of Sholto were said to disagree.

Answer.

The first supposition is totally destitute of foundation in the proof, it is even refuted by the evidence which has been stated, and those very discrepancies, which the pursuers take hold of, afford demonstration, that the story was not concerted, nor the witnesses under influence. It is only necessary therefore, to consider the supposed discrepancies between Mrs. Hewit, and the nurse Garnier.

1st discrepancy.

The first of these was said to consist in this, that the nurse Garnier appears to have been bespoke some days before-hand, whereas, Mrs. Hewit in the service has deposed, that no nurse was bespoke, for this reason, that Lady Jane was apprehensive she would not bear a living child. This is the only passage in Mrs. Hewit's evidence, which has the appearance of singularity—At the same time it is perfectly reconcileable with the evidence. A nurse may have been bespoke without Mrs. Hewit, or even Lady Jane's knowing any thing of the matter. It is plain, that La Marre knew at least some days before-hand, that he was to deliver Lady Jane; and it is natural to suppose, that he would be on the look-out for a nurse. He was in use to frequent the inn called the *Grand Louis*, at the Haute-borne, and Garnier herself says, that he spoke to her before-hand, which may have been the case, though unknown to Mrs. Hewit. Sir John in his declaration says expressly, that La Marre told him, *he knew of an excellent nurse*, to whom the youngest child might be committed. It is possible too, that Mrs. Hewit, whose total ignorance of the French language must have led her into many mistakes, and whose ideas were generally confused, may have been guilty of some misapprehension or slip of memory, in the particulars deposed to by her. At this distance of time, it is impossible to bring accurate proof of every little circumstance, or to account with certainty for every seeming contradiction. It is probable, that Mrs. Hewit's memory may have failed her in some particulars, and the nurse Garnier's, in others. This woman Garnier appears to have nursed a variety of children, at different times, which may also have occasioned some little degree of confusion. It is enough if the fact is proved in its capital circumstances, though trifling inaccuracies should appear.

2d and 3d discrepancies.

Serv. p. 34, D.

The same observation will apply to most of the other supposed discrepancies, between Mrs. Hewit and the nurse Garnier. It was said, that from Mrs. Hewit's letter, 22d July, to the servant maids, Sir John Stewart and she appear to have gone to the country, in quest of a nurse for Sholto, after the birth; whereas, the nurse Garnier was bespoke

bespoke by La Marre in the manner above mentioned; and Mrs. Hewit, in her deposition, seems to say, that she attended constantly on Lady Jane, and never stirred out of the house after the birth, except once to bring the eldest child from the nurse in Paris. It was further observed, that Mrs. Hewit mentions the nurse of Sholto, as having been brought to Paris to the house of La Brun, in order to receive the child there; whereas, Garnier received the child nursed by her at her own house. Purf. pr. 255, G. p. 255, C.

Mrs. Hewit's manner of writing, though natural, was exceedingly loose and inaccurate; for example, in her letter 22d July to the maids, she mentions one of the defender's nurses as a drunkard; and in the next letter, 26th July, she says, "Ill luck poor man he has had to his nurses, but has at last got a fine one, and he not a bit the worse." These passages imply, that some of them had been bad nurses, which was the real fact; as, besides the drunk woman, it is in proof, that the nurse who was dismissed from Michelle's had no milk at all. At the same time, in her very next letter to the servants, of date 12th August, she says, "No less has he had than five, *all good milks*, but base jades" "would not come along with us for love nor money." It is impossible to figure any intention Mrs. Hewit could have in varying this fact, and therefore any mistakes of this kind must be imputed to her careless and confused manner of writing. It would appear, that Sir John had occasion more than once to go in quest of nurses, and it is probable that he took Mrs. Hewit sometimes along with him, though she had no remembrance of that fact, when examined as a witness. It is probable also, that, in her letters to the servant-maids, she magnified her own trouble and fatigue, and spoke of things as done by her, in which she had but a small share. Had there been any fraud in the case, or any combination between her and Isobel Walker, the three letters to the servant-maids would have been accurately perused by her before they were produced, and they would have served as a text to her when she came to be examined, from which she would not in any one instance have departed.—The meaning of Mrs. Hewit's letter goes no further than this, that a good nurse was got for Sholto; but she does not say, that Sir John and she were the persons who found this nurse, without any assistance of La Marre.—It is not said in any of the letters, that this nurse was brought to Paris before she received the child.—This only appears from the deposition of Mrs. Hewit, at the distance of fifteen years from the birth, and either she or the nurse Garnier must no doubt be in a mistake with regard to this circumstance.—It is probable that Mrs. Hewit and Sir John went along with La Marre to the nurse's house, when the child was placed with her, though they have mistaken this fact in their after recollection of circumstances,

ces, and imagined that the child was delivered to the nurse, at La Brun's in Paris.—The nurse Garnier says, that there was a lady in the coach when the child was brought to her, and there may have been another gentleman, besides La Marre, though she does not now remember any other.

4th discrep.

4to, It was said, that the nurse Garnier does not appear to have been desired to quit her own house, in order to nurse the child elsewhere; but that, according to Mrs. Hewit's account, the nurse of Sholto was pressed by Sir John and Lady Jane to go along with them.

Answer.

This is likewise one of those trifling circumstances which it is impossible to ascertain, with any degree of precision, at the distance of so many years, and in which witnesses may have fallen into mistakes, without the smallest intention. It is very probable, that Lady Jane was desirous to take Sholto and his nurse along with her to Reims, and that she spoke of this to Sir John, in Mrs. Hewit's presence, or caused Sir John speak of it to La Marre; but it was natural for La Marre to inform them, that the woman could not possibly go, as she had a husband, and a young family of children, with no other person to take care of them.

5th discrep.

5to, It was observed, that Sir John, in his declaration, makes Sholto's nurse to have lived at a village on the road to Amiens, about two or three leagues from Paris, whereas the Haute-borne is just at the gates of Paris. The Haute-borne is indeed but a short way from the barrier or gate, on the road to Menilmontain; and Sir John, in his declaration, is mistaken as to the distance; but it has already been shown, that Sir John's memory was far from being accurate in such matters; and, in his deposition, he talks of the village where Sholto was nursed, as hard by Paris; depones, "That he cannot recollect the name of the village where the child was at nurse, but it was but a little distance from Paris." The road to Amiens passes very near the Haute-borne and Menilmontain, and therefore Sir John can hardly be said to be in a mistake in that particular.

Purf. pr. 246.
B.

"where the child was at nurse, but it was but a little distance from Paris." The road to Amiens passes very near the Haute-borne and Menilmontain, and therefore Sir John can hardly be said to be in a mistake in that particular.

6th discrep.

6to, The circumstance of Mrs. Hewit's making this nurse a farmer's wife, is perfectly trifling. She lived in the country; her husband a quarrier or day-labourer, and herself a keeper of cows. Mrs. Hewit might naturally suppose her to be a farmer's wife, from no other circumstance but her living in the country. The mistake about the nurse Favre, in making her husband a taylor in place of a joiner, was equally great, and yet could not be intended.

7th and 8th
discrep.

7mo, It was said, that the time of delivering the child to the nurse Garnier did not answer to Sholto. And, 8vo, That the time of taking away the child did likewise disagree. This contrariety as to the times has the appearance of being more important than any of the others;

thers ; but, when narrowly examined, it cannot be of sufficient weight to counterbalance the other circumstances. It is true, the child Jerome appears to have been baptized in March, so that in July he was only four months old, whereas the witnesses say he was *about* six months, a *fortnight more or less* when he was weaned, and that the stranger child was *about* eighteen months with them, *perhaps a fortnight more or less*. It will be observed, that the witnesses talk here from memory, and in a very uncertain way as to times. It is natural to suppose, that they may be mistaken more than a fortnight upon these different æras ; and besides, it would appear, that their son Jerome was not weaned till some time after the stranger child was brought. Madame Garnier says her child was weaned by degrees, ^{Purf. pr. 974} which may account for her uncertainty as to the times. Mrs. Bou-^{H.}cault depones, That it consists with her knowledge that Garnier kept ^{Def. pr. 561} the child *sixteen or seventeen months*, which answers very well to Sholto's time ; and what may have led Garnier and her husband to enlarge the time is, that Sir John, when he took away the child, would, in all probability, pay them for the whole month of November, though the child was taken away in the beginning of that month, so that they would receive seventeen months payment, though the child was with them only sixteen months.

Neither does the circumstance of the child's being brought with the light of a flambeaux make in the least against the supposition of its being in the month of July. The witnesses make the time to have been nine o'clock at night, or between eight and nine ; and it is well known, that, in Paris, in the month of July, it begins to grow dark about that time.

The last circumstance mentioned as a contradiction upon this head, was the fact deposed to by Garnier, that she restored the child to Mr. La Marre in her own house, whereas Mrs. Hewit, in her deposition, talks of the nurse having come along with the child to the house where Lady Jane and she then were. It is probable, that, when the child was brought from the nurse's house, either she or some other woman, whom Mrs. Hewit at this distance of time mistakes for the nurse, came in the coach along with him ; but whether the nurse Garnier, Mrs. Hewit, or both, are in a mistake in relating this particular from memory, is extremely immaterial. These discrepancies only show, that there was no combination among them. Indeed, if we can suppose, that Garnier and her husband, and the other witnesses by which these facts are vouched, were perjured, and were relating a falsehood, it is inconceivable that they should not have made their story to coincide in every article. At least it would have been extremely easy for them to have sworn positively as to the time and other circumstances

ces of bringing the child and taking it away from them. Had they been prompted, the very first and most material circumstance to be suggested to them, would have been, that the child was at nurse just sixteen months, viz. from July 1748 to November 1749, and to this they would have sworn pointedly and precisely.

Def. pr. 567, A. 527, F. It is enough to say, that the capital circumstances are proved beyond dispute; and when these circumstances are taken along with the oath of Madame Granette, La Marre's sister-in-law, and the particulars deposed to by Menager and others, above stated, it seems impossible to doubt, that the child nursed by Garnier was Sholto, the son of Lady Jane Douglas. If he was any other, the memorialist desires to know whose child he was.—The indefatigable pains which the pursuers have taken to investigate every circumstance in this cause, must, long ere now, have produced a discovery of the real parents of this child; if he had any others than Sir John Stewart and Lady Jane Douglas.—They will not pretend that any such discovery is yet made; and therefore, your Lordships will take it for granted that none such can be made.

Arguments against Sholto's existence.

1. Not seeing him.

Answer.

Besides the above supposed contradictions in the evidence with regard to the nurse of Sholto, the pursuers pretended to find out certain inconsistencies in the accounts given by Sir John and Mrs. Hewit with regard to this child; particularly, they said it was very surprising that Lady Jane should have made a jaunt to Versailles on the 26th or 27th of July, and yet never once have gone to the village in the neighbourhood of Paris where her son was at nurse.

The jaunt to Versailles rests, in a great measure, on the single evidence of a Tournelle witness, Madame Blainville, who has fallen into sundry mistakes in her deposition, as above specified. Favre, the nurse, says expressly, that she never saw nor heard of Lady Jane's going out when at Michelle's; and it has already been said that Michelle's people, when questioned about this matter in 1756, did all of them agree that Lady Jane had even *kept her bed* for some time after coming to that house, upon account of the recent delivery.

It seems improbable, therefore, that Lady Jane made any jaunts at this time, further than going to Dammartin in the beginning of August, where she remained for eight or ten days for the recovery of her health, before proceeding for Reims. There was a good reason for her not seeing Sholto at this time; it appears that the child was so exceedingly weak for some time after his birth, that it was necessary to conceal his situation from Lady Jane, until she should be perfectly recovered, and therefore it was extremely proper to divert her from the thoughts

thoughts of going to see her child. Your Lordships will see many traces of this in the letters wrote at the time. Sir John, in his letter to Mrs. Hepburn, 6th August 1748, says, "The angel herself recovers to a wish; it is true, we are obliged to *conceal the tenderness of the youngest* until she is quite well." Mrs. Hewit to Tibby Walker, 12th August 1748, says, "the youngest was very small and weak, and we were in great fears about him, *but did not let your lady know the worst.*" In her letter to Tibby Walker, 26th July, she says, "the youngest lovely dear is very weak, *and durst not tell her.* She is recovered to a wonder; not indeed without the greatest care. She is still very weak, and her doctor has ordered her to be taken to the country in eight days, to make her perfectly fit for her journey home." The weakness of Lady Jane, together with that of the child itself, affords a satisfying reason why she paid no visits to the village where he was nursed, and Mrs. Hewit could not well go without Lady Jane, who had no other person to attend or take care of her. She depones, That Sir John frequently spoke of the welfare of the child, and they knew that he was under the care of a good nurse. The nurse Favre depones, That Lady Jane did not go to see even the eldest child in her house, though her tenderness for him, while in Michelle's, is established in the strongest manner; and it is proved that Sir John called several times a-day to see him.

Ser. p. 31. E.

p. 35. G.

p. 35. B.

— C.

At the same time, the fact, with regard to Lady Jane's seeing or not seeing this child, is not sufficiently ascertained. The memories of Sir John and Mrs. Hewit are not entirely to be trusted in this more than in other facts, in which they appear to have been mistaken. There was no opportunity of cross-examining Sir John, and Lady Jane herself was dead, before any such enquiry was made, otherwise this fact might have been otherwise explained, or at least the motives and reasons of Lady Jane's conduct at the time might have more fully appeared. It can never, in any degree, affect the memorialist, that he cannot, at the distance of sixteen years, give a precise account of every step taken by his parents, and every motive which influenced them.

It was further observed, as a remarkable circumstance, that none of the witnesses who have been examined say, that they saw Sholto during his abode near Paris; and particularly, that the Chevalier Johnston, a cousin of Mrs. Hewit's, with whom they corresponded, and who lived in Paris at the time, appears never to have been informed of Sholto's being at a village in the neighbourhood.

2. Johnston
not seeing
him.

This negative circumstance is noway conclusive; it does not follow, that no person of their acquaintance saw Sholto during his residence at that place, because some persons who have been examined as witnesses

Answer.

did

did not see him. It is in proof, that Sir John went from Reims in company with Baron MacElligot and Mr. Hay, with the professed intention of seeing Sholto, and that Baron MacElligot was prevented from seeing him, by the mere accident of indisposition.

5. Lady Jane
not seeing
him for three
days in 1749.
Answer.

Another circumstance of surprise to the pursuers was, that Lady Jane, in the journey to bring him from the nurse in November 1749, was three days at Paris without going to the village to see him.

This is surely a most trifling observation, when the only proof which they have of the fact is the evidence of Sir John Stewart and Mrs. Hewit, which at the same time says, that Lady Jane was fatigued and out of order with her journey, and the pursuers are not at liberty to divide a fact deponed to from the reason which is assigned; it is impossible, at the distance of so many years, to ascertain precisely every fact or incident of this kind, or to bring infallible proof of every motive of action. One general answer will occur to all of these seeming inconsistencies in the conduct of Lady Jane, that had the birth been fictitious, and Sholto's existence false, it was just as easy for Sir John and Mrs. Hewit, in their after-account of these circumstances, to have said, that Lady Jane saw him frequently, and was often at the nurse's house, both before leaving Paris in the 1748, and after her return in the 1749, as that she was guilty of any neglect or singularity in this particular.

4. Sir John's
ignorance of
the village.

Purs. pr. 246,
G.

The only other observation which deserves to be noticed with regard to the journey 1749, was, that Sir John, in his deposition, talks as if he could not have known where to find the village, without the assistance of Mr. La Marre. This was taken hold of as a most astonishing circumstance; the eldest child forty-eight hours in a house in Paris, unknown to Sir John and Lady Jane, the landlady being the only person who knew where to find him; and the youngest sixteen months in a village which no person knew any thing of, except Mr. La Marre: And the question was put, What would have become of the two children if Madame La Brun and Pierre La Marre had happened to die?

Answer.

With regard to the eldest child, the memorialist has already explained, that the nurse's house, where he was for two days, could not but be well known to Sir John Stewart at the time, though, he says, he does not *now* know where it was. And as to the passage taken hold of about his not knowing where to find the other child, nothing more clearly shows the inaccuracy of Sir John's ideas, for, almost in the next

Purs. pr. 247,
H.

sentence, he depones, "That the house where the deponent and Pierre La Marre found the child, was the same house where the deponent formerly saw the child, in a visit in the 1748, from Dammartin, to

" enquire

“ enquire after the child.” And in another part of his oath, he says, *Purs. pr. 248,*
 “ That when the deponent went from Dammartin to visit the child, ^{C.}
 “ he had a distinct direction to the village; and he is not positive whe-
 “ ther Pierre La Marre went with him at that time or not.”

The existence therefore of Sholto, during the first sixteen months, independent of the natural presumption, that such was the fact, stands fully instructed by a variety of evidence, and the supposed contradictions or inconsistencies, appealed to on this head, are entirely inconclusive. The memorialist will have occasion to show in treating of some articles of the pursuers proof, that their witnesses, even in facts which have a foundation in truth, have fallen into much greater absurdities and contradictions.

Every circumstance of the case shows, to demonstration, that there must have been twins from the beginning. If the birth had not been real, and if Lady Jane and her husband were at that time only in possession of one child, is it possible to figure, that they would have published to the world a delivery of *twins*? And is it not still more incredible, that they should have found it practicable, for sixteen months together, to impose on every person of their acquaintance, and even upon their own servants, so as to make them believe they had two children, when they had only one?

The hypothesis of the pursuers is incredible and monstrous. They suppose the pregnancy and the delivery to have been feigned; and that, on the twenty-first of July, having procured a child, and brought it to Michelle's, and the imposture being thus in so far compleated, they sat down and wrote letters to the servant-maids at Reims, and to their friends at different places, announcing the delivery, and affirming that Lady Jane had brought *twins* into the world.—When they were in possession of one child only, and were not making the least effort to get another, why give out to the world that Lady Jane was delivered of twins? or at least, why did they leave Paris without being secured in another child? One child was sufficient for their purpose, if any purpose was to be served, and having a single child, was attended only with one half of the expence, and one half of the risque of a *double supposition*. If two children were necessary, it was much better to have feigned a second pregnancy and birth, than to have attempted so unnatural a production, as that of a *supposititious* and an *imaginary* child at one and the same birth. Instances have happened of women pretending to be delivered when they were not so, but the present case is the first since the beginning of time, where a woman has been accused of so enormous and complicated a fraud, as first to counterfeit a pregnancy and birth, and to produce one supposititious child, as the fruit of that delivery: *2dly*, To give out and make the world believe, that

that there was another child produced of the same birth, though this other child was a non-entity for sixteen months together: And, lastly, at the end of that time, to purloin a second child, and pass him successfully upon the world, as the youngest of her fictitious twins. If the pursuers can produce any one instance of so strange and multifarious a crime, committed without necessity and without cause, by a woman of the highest rank and most virtuous character, the defender will admit, that Lady Jane Douglas may have been guilty of it.

After being possessed of one child, and having no immediate prospect of another, why write to their friends, on the 21st of July, that they had two children? or, why desire to have two children? Giving out a second child whom they had only in imagination, was risking most unnecessarily the fate of the one whom they had in reality. But since they did give out the existence of a second child, why did they not secure that point, either before leaving Paris, or at least in some of those after jaunts which Sir John made from Dammartin and Reims? Is it to be supposed that they would have remained quietly at Reims for sixteen months together, with this second child only in idea; Sir John, during that time, going publickly and avowedly to Paris with Baron MacElligot, Mr. Hay, and others, to see Sholto; and Lady Jane desiring Lady Wigton to visit the child, and to write her a particular account of his health? Is it not still more extraordinary, that, in place of killing this imaginary child, which it was in their power to have done, they should have gone to Paris with the professed intention of bringing him from thence, at a time when their schemes were totally frustrated (as will be afterwards explained) and that they should have had the surprizing good fortune, without any sort of trouble or inconvenience, in the course of a few days residence in that city, to bring away a child answering in every respect to the description they had given of Sholto; and all this without producing a suspicion in the country where it happened, or even in their own family? These are things which surpass comprehension or belief, and yet they are supposed to have been done by Lady Jane Douglas.

If they were guilty of an imposture, they seem to have studied to give their friends an opportunity of discovering it. They had invited Lady Wigton to go and live with them when they left Aix-la-Chapelle; pressing letters were wrote, both to her and Lord Blantyre, to come to Reims to them after the delivery; and, what is very remarkable, there are letters in process from Sir John to his eldest son, pressing him to come over and live with Lady Jane and him; one of them, dated 11th November 1748, in which he says, Lady Jane is extremely desirous to make him acquainted with his *brothers*.

Def. pr. 296, The passage is in these words: " But, my dear Jack, now that you are
F. " disengaged,

“ disengaged, what should hinder you coming here to me, where you
 “ have hearty welcome to Lady Jane, who wants much to make you
 “ acquaint *with your brothers*, and renew your acquaintance with me?
 “ If you have money, a little cannot be better employed than on such
 “ a journey. If you have little of that necessary evil, frugality should
 “ determine you to gratify me in it, as you cannot possibly live so
 “ well and so cheap as with us, where it shall stand you nothing to fare
 “ as we do; so, my dear, come.” So earnest was Sir John that his son
 should come over, that he appears to have wrote letters on the same
 subject to Mr. MacEwan, his man of business in this country, re- Appendix.
 questing him to use his endeavours with the young gentleman to per-
 suade him into the measure.

It was said, that the description given of Sholto in all their letters, as a weak and puny child, was affected and unnatural; and the reason of it was supposed to be, that the world might be prepared for his death, in case a second child could not be found.

This observation is not entirely consistent with another conjecture, in which the pursuers have indulged themselves, viz. That the scheme *once* in view was, to adopt the child of the nurse Mangin. It will be observed, that this nurse was hired about the 9th or 10th of August, and that the child died on the 1st of October. This child, had he lived, and been adopted by them, would have answered extremely ill to the description given by them of Sholto, because, in fact, he was five or six months older; and therefore, during the time that he is supposed to have been in their possession at Dammartin, the letters wrote by them to their friends ought to have bore, that Sholto was remarkably recovered, and that he was now a stronger and bigger child than the eldest. And again, when the accounts of this child's death reached them, they should have wrote that Sholto was relapsed into his former weakly state, and that he was less to be depended on than ever.—In place of this, your Lordships will observe the stile of their correspondence in these different periods.

Lady Jane, in her letter to Mr. Haldane, of date 16th September 1748, in talking of the children, says, “ The one is very strong and pro- Purf. pr. 63,
 “ mising, the other *extremely weakly*, and does not promise a great deal; D.
 “ however he still lives.” Sir John, in his letter to Lord Haining, of
 date 25th August 1748, says, “ The one is strong and promising, the —63, I.
 “ other, poor little thing, *so very puny*, we were obliged to have him
 “ christened immediately, lest he should have died without that ne-
 “ cessary ceremony; however, God be thanked, it still lives, and we —67, C.
 “ have more hope than fear about him.” In his letter to Madame
 Tewis, 3d September 1748, he mentions the children much in the
 same stile. Lady Jane to Lady Charles Ker, 19th September 1748,
 says,

Purf. pr. 66, C. says, "That on the 10th July she was blessed with two boys; the
 "eldest strong, and likely to do well, the other the reverse, *being*
 "mighty weakly; however he yet lives, and has got a very good
 "nurse."

The above were wrote while the nurse Mangin's child was alive, and at Dammartin; the following bear date subsequent to his death:
 Serv. p. 32, E. Lady Jane to Mrs. Hepburn, 11th October 1748, says, "Your friend
 "Mr. Stewart is gone the day before yesterday to see little Sholto, who
 "is still mighty weak and tender, *though rather somewhat revived,*
 "and better, I hear, *within these few weeks.*" To Mr. Haldane, 2d
 Purf. pr. 540, D. December 1748, she says, "The younger one, Sholto, is in a better
 "way, and grown stronger than his first appearance gave room to ex-
 "pect." Sir John to Madame Tewis, of date 6th January 1749,

—812 B says, "They send us word that the other (of whom we despaired, he
 "was so weak at coming into the world) *recovers, and promises well.*"
 To Lady Mary Hamilton, of date 5th June 1749, says, "My young
 pr. 985, "ones, you so kindly interest yourself in, are in a very good way;
 "the eldest, Archy, is, I bless God, sturdy and well; has already got
 "out nine teeth, which is much within the year; poor Sholto *has got*
 "but two, and with more anguish than Archy with his mouth-ful cut,
 "and cutting; *however, Sholto may do well, though delicate and puny*
 "in respect of his brother." There is something so natural in this de-
 scription of the teething, that even of itself it furnishes proof the most
 irresistible of Sholto's existence.

To Mr. Hamilton, the minister, she writes, of date 26th March 1749, "Poor Sholto we gave up for lost, from the feeble condition he
 "came to the world in, but, by being lucky in an *excellent nurse,*
 "gains ground, and we hope *may do well,* now the favourable season
 "comes on, and they are past eight months old."

When these letters were wrote, all hopes with regard to the nurse's child, if they ever had any, were at an end by his death; and they are supposed by the pursuers to have had nothing else for the youngest twin, but the uncertain chance of picking him up in some future excursion to Paris; yet they describe Sholto as daily growing better, which agrees entirely with the true fact concerning him, as has been shown; but was absurd, if Sholto was an imaginary being.

PRESUMP-
TIVE
PROOF.

The circumstances of the birth being thus proved by the direct testimony of witnesses, corroborated by such a variety of collateral evidence, it might seem unnecessary to give your Lordships any further trouble, by multiplying arguments in support of a fact already clearly established. That nothing, however, may be left untouched, in a question of so great importance, the memorialist shall, in the
 next

next place, beg leave to bring under view those legal presumptions arising also from the proof; but, independent of the actual evidence of pregnancy or delivery, by which he is advised that his filiation and state, as the son of Lady Jane Douglas, stand legally established;—these may be classed under the following heads:

1. His act of baptism,—2. The tractatus, behaviour and conduct of his parents, and their solemn declarations in his favour.—3. Habite and repute.—4. The acquiescence of his relations.—5. The verdict of a jury.—6. Established possession of his state.—7. Resemblance of features.—8. Character of Sir John Stewart and Lady Jane Douglas.

Upon the first of these heads, the memorialist has already stated^{1. BAPTISM.} what weight is laid on the record of baptism by the laws of France, the place of his nativity, and he has shown, that even by the customs of other countries, the solemnity of baptism, and the publick document taken by registration of the child's name, and the names of his parents, afford a strong legal presumption and evidence of filiation. An extract of the memorialist's baptism, taken from the register of the parish of St. James at Reims, is in these words: "In the year 1748, Def. pr. 724, September 22d, I Antoine Curios, priest, doctor of divinity, and^{G.} curé of this parish, subscribing, have baptised the son of Messire John Stewart, a Scots gentleman, and of my Lady Douglas, (a married couple) by the name of Archibald-James-Edward: the godfathers were Mr. Charles Macnamara, who stood proxy for the Earl of Crawford, the Baron Cæsar MacElligot, and my Lord Blantyre: the godmothers were Madame Elizabeth Goffe, spouse of Mr. Simon Andrieux, who stood proxy for the Marchioness of Lothian, and the Countess of Wigton. Signed, John Stewart, father.—Macnamara. The Baron Cæsar de MacElligot, godfather. A. Curios. Countess J. Wigton."

The pursuers objected to this act of baptism, 1st, That it was performed at the distance of two months after the birth, and at a place^{Table of contents, p. 26. Objections.} where none of the witnesses present could have any knowledge of it. 2dly, That the act of baptism makes no mention of the date or place of the birth.

It is indeed the custom of France to baptise children immediately^{Answer.} after the birth; but accidents often happen, which occasion a delay, and none of their laws, so far as the defender knows, require that the baptism should be in the same parish with the birth.—The faith of the record is the same, whether the baptism be immediately performed or not, and whether it be in the same or in a different parish from the birth, as appears from fundry of the cases above stated, from the

journal des audiences, particularly the case of *Perrier*, where the baptism was not performed till two years and four months after the birth, and in a different place. In the case of *Rougemont*, the baptism was performed in a different parish, and witnessed only by two children; yet the baptismal act, such as it was, joined with the uniform possession of state, were held as irrefragable proofs. Besides, it appears in proof, that, in the case of strangers or protestants, the custom, with respect to baptising immediately after the birth, is not attended to by the accoucheurs or midwives, and that the parents of such children may baptise them either in the church or not, and at what time they think proper.

In the present case, the baptism of the defender was delayed, merely because Lady Wigton, Baron MacElligot, and Lord Blantyre had been wrote for, and had engaged to assist at that ceremony. Lady Wigton depones, " That the baptism of the child at Reims was delayed for
 Scr. p. 27, G. " some time till the deponent's arrival, in order that she might stand
 " godmother at his baptism: That soon after the deponent came there,
 " the said child was baptised, &c."

And the same thing is, in substance, deposed to by Baron MacElligot. This fact, therefore, is clearly ascertained; and, indeed, no other reason for the delay can well be figured. It is not necessary, in France, for the sponsors to say that they were present at the birth, or know any thing about it; the truth of the birth is always taken for granted, without questions asked; and, therefore, supposing a fraud to have been committed, it was just as easy and natural to have baptised the defender at Paris as at Reims.
 Def. pr. 350, B.

The second objection, arising from the supposed defects in the act of baptism itself, had the appearance of being more material. The omission of the day and place of the birth seemed to indicate an intention to conceal these particulars; and accordingly, the French lawyers, upon whose advice the *Tournelle* action was raised, in their consultation produced, take hold of this circumstance, and insist, that the act of baptism is no title in favour of the defender, because it labours under the above defects. The French council, however, in this part of their opinion, as in many others, have proceeded on misinformation. In fact, it is now proved by a variety of extracts produced, and by the deposition of the keeper of the register, that it was not the custom in Reims, prior to the 1752, to insert either time or place of birth in any act of baptism whatever. These extracts, which are all in the same style with the memorialist's, your Lordships will find in p. 724 of his proof; and Mr. Savar, chaplain of the parish of St. James at Reims, deposes, " That he has made a search in the register of baptisms in the
 613, B. " parish of St. Jaques of Reims, of all the acts of baptism dated in
 " the two years 1748 and 1749. Depones, That by this search, and
 " by

“ by reading of these acts, he is certain that there is not there any
 “ one in the years 1748 and 1749, which make mention of the day
 “ nor the place of the birth of the children. Depones, That the eigh-
 “ teen extracts of baptism which he now produces, which are all
 “ wrote upon the same leaf, the first of which, dated the 3d September
 “ 1748, and the last the 24th of October following, are taken from
 “ the register above mentioned, and are conform to this register.”

There is no express law in France requiring the *place* of birth to be mentioned. The ordonnances, indeed, appoint the *day* of the child's birth to be inserted in the record ; but the sole meaning of this regulation is, that it may serve as a proof of *age*, in any question of majority or minority.—And, at any rate, as the record is made up by the curé, so any omission of this kind must be imputed to him, and not to the father. In the present case, however, there was no omission, or at least none intended, and, indeed, it would have been absurd to have concealed, in the act of baptism, what was known to the whole city of Reims.

A similar objection was made with regard to the ondoyment of Sholto, that it was not to be found in any record, and that this was contrary to the laws of France, which obliged every accoucheur and midwife, upon ondoying a child, to go immediately to the parish curé, and make a declaration of the fact, to be entered in the record.

It may be true that there is a regulation to this purpose ; but it is also true that no such regulation is ever in practice observed, even in the case of catholick subjects, far less in the case of protestants. Madame Jonet depones, “ That it is not, except when they carry the child to the parish, to supply the ceremony of baptism, that the midwife declares that it has been ondoyed, and that there are parishes where, in the act of baptism, mention is made of the ondoyment, and the midwife who has ondoyed, is made to sign, and that there are other parishes where they neither sign the said act, nor make mention of any ondoyment in it. Depones, That in the case where she, the deponent, had ondoyed a child, which should be afterwards carried to the hotel of a protestant ambassador, she would not think herself obliged to make a declaration of the ondoyment to the curate of the parish, but only to the persons who should carry it to the ambassador's house to be baptised.”

Mr. Levret, one of the most noted accoucheurs in France, depones, “ That four months ago, or thereabouts, it happened to the deponent to ondoye a child : That the father and mother having appeared troubled that he had made the ondoyment, and that upon that he
 “ represented

“ represented to them, that, in carrying the child to the parish, the
 “ curate must be advertised that the infant had been ondoied, they an-
 “ swered him, that that was none of his affairs, which discovered to him
 “ that they were protestants, and determined him not to meddle any
 “ more, as he was not charged with the child, and that if he did not
 “ make his declaration of the ondoiment of this child to the curate, it
 “ is because he was then ignorant that it was his duty to declare the on-
 “ doiments to the parish, according to the declaration of the King, of
 “ the year 1736, with which he was not acquainted.” Here your
 Lordships will observe, that one of the most celebrated accoucheurs in
 Paris did not so much as know that such a regulation existed.

Purf. pr. 732,
 H.

Madame Pinot depones, “ That if the child happens to die, they
 “ carry him to the church, and upon the certificate of the midwife,
 “ that he was ondoied, they bury him in consecrated ground, and
 “ mark him down in the register which is kept conform to the or-
 “ donnance for marriages, baptisms and burials. Depones, that if the
 “ child ondoied live some days, they carry him to the church to be
 “ baptised, as soon as he is in a condition to be transported thither:
 “ That then the midwife acquaints the curate that the child has been
 “ ondoied, after which the curate baptises him, under condition, but
 “ without making mention of the ondoiment in the extrait baptistaire:
 “ That, however, the deponent has seen two examples, within these
 “ twelve months, of extraits baptistaire, in which was marked, *baptism*
 “ *supplied*. Depones, That accoucheurs and midwives are discharged
 “ to ondoie children except in imminent danger. Depones, That it
 “ is only in the case of the child's death that they give a certificate of
 “ the ondoiment, because, if the child lives some days, he is carried to
 “ be baptised in the church, where the midwives acquaint the curate
 “ of the ondoiment, without giving any certificate of it in writing. In-
 “ terrogated for the defender, depones, That in the case where the
 “ midwives have delivered a lady who is a stranger, and not of the
 “ Roman catholick religion, it may happen, and that it actually has
 “ happened to the deponent, to leave the new-born child to the father
 “ and mother, to be by them baptised in their own chapel, according
 “ to their own rites; and that, if the child was in a condition to re-
 “ quire ondoiment, that it might not perish without baptism, the de-
 “ ponent would ondoie it, and, after that ceremony, would deliver it
 “ to the parents, to dispose of it in relation to baptism, as she has al-
 “ ready said, according to their own rites, declaring to the parents of
 “ the new-born child, that it would not be allowed to her, nor to any
 “ other person of her condition, to carry a child to the ceremonies of
 “ baptism any where else than to the parish church.”

Had

Had the child died, it is probable that mention would have been made of the ondoyment in the *extrait mortuaire*, or if he had been re-baptised formally in the parish church, the ondoyment might possibly have been noticed in the *extrait baptistaire*, though, from the above depositions, it appears, that this practice is seldom, even in that case, observed. But, where the child neither dies nor is re-baptised in the parish church, and especially, if he is the child of protestants, an instance will not be found in all the records of Paris, of the ondoyment of such child being entered. Had the defender been ondoymed in Paris before setting out for Reims, it is morally certain that his ondoyment would not have appeared in any record.

The conduct, the affection, and solemn declaration of parents, ^{2. TRACTA-} which by all lawyers are acknowledged to be strong presumptions of ^{TUSE ET NO-} filiation, are in this case proved in a remarkable manner. The parti- ^{MINATIO.} culars of the proof on this head are striking and manifold, not consisting in a single act of acknowledgment, but uniform, without variation, and manifested, not only on solemn and publick occasions, but in their most secret correspondence and private intercourse, where fraud or dissimulation is impossible to be figured. Your Lordships have proof of it from the birth downward, to the death of Sir John and Lady Jane.—While at Paris, in the house of Michelle, among persons whom they never were to see again, or have the least connexion with, it was surely unnecessary for them to assume any extraordinary appearance of affection or care for a supposititious child. Yet Lady Jane is described as fainting, Sir John holding up his hands and exclaiming, and Mrs. Hewit in the greatest confusion, when the nurse of the defender was discovered to want milk.

Madame Blainville depones, “ That the gentleman begged of her to ^{Purf. pr. 880.} go into the lady’s room to see a child; the deponent went in there ^{E.} with the gentleman, and found there two ladies, a nurse and a child, one of these ladies, dressed in blue, took the deponent courteously by the hand, and begged her to look at her child, which would not take the nurse’s breast, and which always cried; the deponent sat down upon the ground, undressed the child, saw that it was a boy, who appeared to the deponent languishing and of delicate health, and who would not take the nurse’s breast; that the deponent having seen nothing about the body of the child that hurt it, she examined the nurse’s breast for a full quarter of an hour, and having in vain tried to bring milk from the woman’s breast, she did not appear to have had any milk; that the deponent said immediately to the lady, that she behoved to turn off that woman; upon that, the gentleman falling into transports, and lifting his eyes to

“ heaven, cried out, *Wretch, do you know whom you have to do*
 “ *with, that child is of much greater value than you imagine*, or some
 “ discourse to that purpose : the lady threw herself into an arm-chair,
 “ near the window, and fell down as in a faint : that the lady, her at-
 “ tendant, gave her a little water, which she refused to take, and the
 “ lady then fell a weeping : that the deponent advised the gentleman
 “ to cause call Madame Michelle and put away the nurse : that the
 “ nurse threw herself at the gentleman’s knees, who said, *that she was*
 “ *an unhappy wretch ; that he would have carried her with him, and*
 “ *would have made her fortune* : that the nurse said, *that she had not a*
 “ *penny, and that it was half an hour after ten o’clock at night* : where-
 “ upon the deponent advised the gentleman to give her something in
 “ charity : that, in consequence thereof, the gentleman gave her, as
 “ the deponent believes, two pieces of 24 sols, and the nurse went a-
 “ way ; after which Madame Michelle, whom the deponent had call-
 “ ed, came in : That the deponent told Madame Michelle what had
 “ passed, and said to her, that she behoved to seek a nurse : that the
 “ gentleman joined the deponent, and the lady remained upon her
 “ chair, with her attendant : that Madame Michelle, after having
 “ spoke to the gentleman, went and spoke to the lady to desire her not
 “ to afflict herself, as the deponent believes.—That when the deponent
 “ went into the room in Michelle’s house, where she saw the child for
 “ the first time, the deponent believed that the child belonged to the
 “ lady, but that she was much more convinced of it when she saw
 “ the emotions of tenderness of the lady towards the child, which she
 “ has above described, and that then the deponent could have sworn,
 “ according to her opinion, that the lady was the mother of that
 “ child. Depones, that the lady began to recover in Michelle’s house
 “ while the deponent staid there, and that she appeared to have a
 “ more gay air, because her child was well nursed by the second
 “ nurse ; but that there always remained with her an air of melan-
 “ choly.”

Purf. pr. 87r,
A.

p. 833, H.

p. 883, E.

Def. pr. 590,
G.

Madame Michelle’s deposition has already been noticed, in which
 she says, that the lady showed such sensibility and tenderness for
 the child upon that occasion, “ That the deponent did then believe
 “ that she was the real mother of the child, and believes so still ; and
 “ that she acted her part surprisingly if she was not.” The nurse Fa-
 vre depones, “ That the gentleman and the lady caressed the child
 “ much, and embraced him, and shewed a great deal of tenderness for
 “ him ; and that the gentleman appeared to be very angry, when the
 “ deponent refused to go to Reims, as aforesaid.” Favre, the husband,
 depones, “ That while this stranger child was in his house at Paris,
 “ his wife told him, that the child’s father came often to see the child,
 “ sometimes

"sometimes twice a day; and there was no day that he did not come oftener twice than once."

At Dammartin it is proved, that the child never cried, but Lady Jane showed the utmost distress, and Madame Daux was obliged to observe to her, that children could not be brought up without crying sometimes. Def. pt. 594, F. 595, B.

Upon their return to Reims, the fondness of parents manifested itself in all their conduct, as has been proved by a variety of witnesses. Madame Mayette depones, "That she observed that Madame Stewart loved this child (the defender) very much; that he was very ill in teething, in so much that Madam Stewart rose two or three times in the night, fearing that this child might die in the hands of the chamber-maids.—Depones, that Madam Stewart, during her stay at her house, went very little abroad, and that she was almost constantly attending her child, alarming herself with the least cries which he gave." See also Madame Mailfer, Mr. Andrieux, and nurse Mangin, who all bear witness to Lady Jane's particular attention to the child. —518, B. —E. p. 602, 523, 596, E.

Baron MacElligot depones, "That Sir John and Lady Jane did both show the most parental tenderness and fondness for their son Archy, that he cannot forbear mentioning, that several times, whilst Sir John was dancing, the child in his arms, Lady Jane, from apprehension of an accident happening, frequently screamed out, and took the child from him." p. 350, B.

General Maclean depones, "That Lady Jane and Sir John always showed the most parental care and affection for their son, and that he firmly believed him to be Lady Jane's, &c." —364, C.

At Dunkirk, one of the children happening to be out of order, Lady Jane's anxiety discovered itself in a remarkable manner—Chevalier Douglas depones, "That Lady Jane then shewed all possible tenderness for her two children, and he remembers, that one day being at dinner with her, not in her own house, they came and told her, that the youngest of her children was sick, upon which she rose immediately from table, and ran through the streets with the deponent, whilst it rained, to see her child, and the deponent had not the least doubt or suspicion, that these children were not the children of Lady Jane." p. 502, A.

In another part of his oath he says, "That during the time he was at London (in 1753,) Lady Jane received a letter from Edinburgh, which informed her of the death of her youngest son; that the deponent was present when she received this letter, and he never saw a woman so disconsolate as Lady Jane was, when she received it, and" —503, C.

“ and fundry times after this, he saw her weep for the death of the
“ child.”

In Britain, the proof upon this head is no less satisfying.—The uniform propriety with which both Sir John and she behaved in their family, and the strong parental feelings which they at all times discovered, are attested by such a number of witnesses, that, to cite the whole of them would be tedious.—Lord Lindores depones, “ That he
Def. pr. 371, D. “ was well acquainted with the deceased Lady Jane Douglas, and had
“ frequent occasions of seeing her, and her children together. And de-
“ pones, that she behaved to her children with as much tenderness
“ and affection, as he ever saw any mother behave. Depones, that
“ the youngest child Sholto was of a fair complexion, and was the
“ picture of his mother Lady Jane. And depones, that the eldest was
“ of a brown or dark complexion, and appeared more like Sir John
“ Stewart than Lady Jane. Depones, that he never entertained the
“ least doubt of their being Lady Jane’s children, as she was a lady
“ of too much honour and virtue, as to be capable, in his apprehen-
“ sion, of imposing children on the world as her’s, that were not so;
“ and was generally respected and esteemed by all that knew her.
“ And being further interrogate, depones, That the deponent particu-
“ larly remembers being in company with Lady Jane and the chil-
“ dren, when one of them, as the deponent thinks, the youngest,
“ struck his head against the tea-table, and fell down, upon which
“ Lady Jane immediately fainted away, and fell back in her chair;
“ that upon her recovery, the child was immediately put to bed, and
“ the deponent having staid to supper, Lady Jane being under great
“ apprehension and concern, went frequently, and, as the depo-
“ nent believes, six or eight times, to visit the child up stairs.”

Purs. pr. 377, E. Mr. Stewart Mackenzie depones, “ That he had frequently seen La-
“ dy Jane Stewart and her children together; that on all these occa-
“ sions she behaved with the most tender and anxious concern, and
“ showed the most motherly care and affection for them.” The same
thing is confirmed by many other witnesses of undoubted honour
and credibility.

Def. pr. 385, A. Doctor Martin Eccles depones, “ That he was oft with Lady Jane
“ during her last illness, until her death; that Lady Jane’s fondness
“ for the defender continued to the last; that she expressed concern
“ what should come of him after she was gone, and expressed herself
“ to that purpose to the deponent often; that the deponent never saw
“ any of Lady Jane’s relations come near her about the time of her
“ death; that during Lady Jane’s last illness, the deceased doctor
“ Clark, and doctor Dundas, attended her as physicians, but chiefly
“ doctor Dundas, who attended daily. Being interrogate for the
“ pursuers,

“ pursuers, depones, that he commonly visited Lady Jane during her
 “ last illness, once or twice a day, during that time; that he cannot
 “ exactly recollect the time of the day when she died, nor how many
 “ hours before her death he saw her, but is sure he saw her within
 “ twelve hours of her death; that when he last saw her, she was much
 “ extenuate and wore out, but he thought she had her senses, and that
 “ she spoke when he saw her last. Being interrogate for the defender,
 “ depones, That he always believed the defender and his twin bro-
 “ ther to have been Lady Jane’s children, from the constant affection
 “ and tender concern she had for them, and if it had been otherwise,
 “ he thought it impossible she could have acted such a farce, and
 “ would have contradicted herself, by not showing the same constant
 “ uniform anxiety about their welfare, which the deponent, on every
 “ occasion, observed her to express.”

Mrs. Maitland, widow of the honourable Mr. William Maitland, Def. pr. 386;
 depones, “ That when Lady Jane Douglas came to Scotland with her ^{B.}
 “ children, she came first to the deponent’s house, where she took lodg-
 “ ings, and remained for some time, but does not remember how long,
 “ but thinks it was some months. Depones, she had occasion to see
 “ Lady Jane and her children almost every day, during the time they
 “ staid at the deponent’s house, and that Lady Jane was a fond indul-
 “ gent mother, and that she never saw any parent exceed her in that
 “ respect; that her son, Sholto, was as like her in every respect, as
 “ ever a son was like his mother, but that, notwithstanding this, she
 “ appeared to the deponent to be always rather fonder of her son Ar-
 “ chy. Depones, That when Lady Jane returned from London in the
 “ year 1753, the deponent soon had occasion to see her, when Lady
 “ Jane told her, that she had received a letter, just as she was setting
 “ out from London for Scotland, giving her an account of her son
 “ Sholto’s death, which had affected her in such a manner, that she
 “ believed she never would get the better of it, and the deponent
 “ thinks she never did get the better of it.”

Those who had best access to know Lady Jane, were fully persuaded,
 that the loss of Sholto was the cause of that illness, which brought her,
 in a few months after, to the grave.—Her situation is pathetically de-
 scribed by a witness who had occasion to visit her after receiving the
 news of Sholto’s death, and who, at the same time, bears testimony to
 the solemn declarations which she made, as a dying woman, in favour of
 her children. Mrs. Macrabie depones, “ That Lady Jane had her cloaths
 “ on, but was lying above the bed, and appeared to be in great distress.
 “ Depones, That Lady Jane asked the deponent, Whether or not Colonel
 “ Stewart and Mrs. Hewit had desired her not to mention Sholto’s
 “ name? she answered they had, but that she would not promise not

401, R.

—G—

“ to do it; that Lady Jane said, she was in the right; then she said,
 “ Will you indulge me to speak of my son? and cried out with great
 “ vehemency, Oh! Sholto, Sholto, my son, Sholto; and after speak-
 “ ing of the death of her son Sholto, she said, she thanked God,
 “ that her son Archy was alive. Depones, that she said, What
 “ would the enemies of me and my children say, if they saw me lying
 “ in the dust of death, upon account of the death of my son Sholto?
 “ Would they have any stronger proof of their being my children,
 “ than my dying for them? and that she still insisted, that the shock
 “ which she had received by the death of Sholto, and other griefs
 “ that she had met with, were so severe upon her, that she was per-
 “ fectly persuaded she would never recover, but considered herself as a
 “ dying woman, and one who was soon to appear in the presence of
 “ Almighty God, and to whom she must answer, she declared, that
 “ these children, Archy and Sholto, were born of her body; and that
 “ there was one blessing which her enemies could not deprive her of,
 “ which was her innocence, and that she could pray to Almighty God
 “ for the life of her other son; that the deponent advised her to take
 “ care of herself, for that her death would be a great loss to her son;
 “ that she said, she was not afraid for him, for that God Almighty
 “ would take care of him; and when the deponent advised her not to
 “ indulge her grief so much, for that it would hurt her, she answered,
 “ that she found, that what she said had relieved her mind, and given
 “ her ease. She further added, that she thought it the duty of good
 “ Christians to forgive their enemies, and that she accordingly forgave
 “ hers.”

Def. pr. 400, D. This same witness had travelled from Edinburgh to London in the stage-coach with Lady Jane, a short time before the accounts came of Sholto's death. Depones, “ That during the journey, Lady Jane was very cheerful and agreeable, and appeared to be in a good state of health, and often spoke of her children.”—But, after describing the above interview, she adds, “ That after this, she saw Lady Jane frequently at London, and that her distress rather grew worse and worse. Depones, “ That she never entertained the least doubt, but that the children were Lady Jane's, and if she had done it, Lady Jane's distress upon the death of her son Sholto, would have removed such a doubt altogether.”

401, E. William Gordon, another passenger in the stage-coach, depones, 405, A. “ That, during the journey, she was cheerful and agreeable, and appeared to be in good health. Depones, That when they came to London, they stopt at the house of Hosea Eastgate, the coachman's house; that Lady Jane proposed to stay there, till she received her letters from Scotland; that the deponent and Mrs. Hewit were with her,

" her, as was also James Wright; that Lady Jane sent for her letters,
 " and that a letter or letters were brought to her by one Mr. Farquhar,
 " as he thinks, who had once taught French at Edinburgh; that upon
 " Lady Jane's reading of the letter or letters, she appeared to be very un-
 " easy, in so much, that Mrs. Hewit was obliged to send for wine and
 " water to give Lady Jane to drink; and when she had read the letter
 " or letters, she told the company, at least Mrs. Hewit, in the depo-
 " nent's hearing, that she had got an account of her son Sholto's ill-
 " ness, and the account was so bad, that she was afraid, the next ac-
 " counts would be of his death; that a machine was called for, which
 " carried Lady Jane and Mrs. Hewit off, and that Lady Jane desired
 " the deponent to see her before he left London, and told him, that
 " Mr. Farquhar would inform him where she staid; that accordingly,
 " some time in May that year, being directed by Mr. Farquhar, he
 " called for Mr. and Mrs. Thomson in the Fleet, under which names
 " Colonel Stewart and Lady Jane then past, as Mr. Farquhar told the
 " deponent; and when he was introduced to Lady Jane, he found her
 " in very great distress, which he attributed partly to her son's death,
 " and partly to other disagreeable circumstances, under which she then
 " was; and that the deponent was so affected with her situation, that
 " he made his stay very short. Depones, That at Lady Jane's desire,
 " he visited her again after her return to Scotland, when she was living
 " in the Cross-causeway, and that he found her then in a very dejected
 " situation."

Lady Jane, in her letter to Lady Mary Hamilton, 24th July 1753, says, ^{Def. pr. 987,}
 " I have been extremely ill, my dearest Lady Mary, else her dear sym- ^A
 " pathizing letter had not been so long unanswered. I never can for-
 " get the part your ladyship acted in my absence, during the illness of
 " my dear infant, and in the whole of that melancholy scene. I have
 " received accounts from different hands, of all your endearing beha-
 " viour on that occasion. May it please Heaven to put it in my power,
 " to shew my gratitude to my dearest Lady Mary, for that mark
 " of her uncommon goodness and favour to me in the day of my di-
 " stress." In the close of the letter she again talks of her health and
 " says, " You would scarcely know me." ^{-D.}

Mrs. Elizabeth Johnston depones, " That soon after Lady Jane's ^{403, B.}
 " return to Edinburgh, after her son Sholto's death, the deponent paid
 " her a visit in rooms which she had taken at the Water-gate, at which
 " time she was so much altered with sickness, that the deponent would
 " scarce have known her; that Lady Jane thanked the deponent for her
 " seasonable and active friendship, in carrying away Archy, and tak-
 " ing a proper care of him; and the deponent believed, the reason of
 " Lady

“ Lady Jane’s thanking her, as above deponed upon, was, because Archibald was in the house with Sholto, when Sholto took the fever, and the deponent carried off Archibald, to avoid the infection. Depones, That she never mentioned Sholto’s name to Lady Jane, because she was sure it would distress her. Depones, That Sholto was as like his mother, as a son could be like a mother, in the deponent’s opinion, and in the opinion of all she heard speak of him.”

Def. pr. 407,
B.

Mrs. Smith depones, “ the last time she saw Lady Jane was, when she came last down from London to Edinburgh; that Lady Jane was then lodged in a house in the Canongate of Edinburgh, where she had only come the evening before, but cannot remember the house in the Canongate; that Lady Jane was quite able to speak to her, but was very much cast down, and in great grief for the death of her son Sholto, and talked of him with the greatest affection.

The dying declarations of Lady Jane in favour of her surviving son, are no less clearly instructed. She was not visited by many of her relations, when in her last sickness, but every person who had occasion to see her upon that awful occasion, has bore testimony to the strong attachment she showed to the defender, and the affecting manner in which she spoke of him as her son.

Serv. p. 23, B.

Mr. Douglas of Edrington, a witness in the service, depones, “ That two days before Lady Jane’s death, he went to wait upon her, when she presented the claimant to him, calling him *her dear son Archy*; that the following day the deponent went to dine with Lady Jane, and after dinner she turned serious, and told him, that she knew she was dying, and expressed no concern for her approaching death, but seemed to be greatly afflicted, at what would become of her dear son Archy when she was gone, which were the words that she used, as near as the deponent can recollect; and upon this occasion she fell a crying, and seemed to be deeply afflicted, and thereupon the deponent a little after left her, not being able to stand it longer.”

Def. pr. 388,
E.

Janet Andrew depones, “ That Lady Jane took the sacrament in the New Grayfriars church about eleven days before her death, and that after this she never went abroad. Depones, That every night, for some time preceeding her death, Lady Jane took leave of her son Archibald, after taking the sacrament, in a very affectionate manner, and as a dying woman; and that for many nights before her death, she was so ill, that she did not expect to see the morning. And depones, That Lady Jane died about 11 o’clock of the forenoon, of the 22d day of November.”

Serv. p. 17, B.

Mrs. Greig depones, “ That the deponent knew Lady Jane when she was at London, and the deponent waited upon her as her maid in the house with her for some months; that she behaved in the most motherly
“ and

“ and affectionate way to her two sons ; that they were her whole concern, and that, if they were well, all was well with her ; that the deponent saw Lady Jane in Scotland two days before her death ; that she spoke anxiously about her son Archibald, the claimant, and hoped all would be well with him ; that she despised the stories that the deponent told her had been talked, that Archibald, the claimant, was not her son ; that the deponent asked Lady Jane, if she had taken any step to prove that he was her’s ? To which she answered, That it was an unprecedented thing to take any step of that kind, and, if any body doubted of it, it was their business to prove that the child was an impostor, which she knew was impossible, for Mr. Stewart owned the child as his, and knew it, and God knew that the child was her’s, as well as she herself did.”

Mrs. Hewit depones, “ That Lady Jane was attended in her sickness at London by Mr. James Pringle, surgeon to the guards, and, when he left that place, by Mr. Fordyce ; that these gentlemen told the deponent, that Lady Jane’s disease was a broken heart ; that Lady Jane returned to Scotland in August 1753, and died the 22d November following ; that, about four hours before she died, she ordered her son Archibald, the claimant, to be brought to her, when she laid her hand upon his head, and said, God bless you, my child, God make you a good and an honest man, for riches I despise ; take a sword in your hand, and you may one day be as great a hero as some of your predecessors.” Serv. 13, F.

Isobel Walker depones, “ That my Lady appeared greatly shocked and afflicted with the death of her second son, who had died after she went last to England ; and it was the deponent’s apprehension, that Lady Jane’s affliction on that account was the cause of her death. Depones, That she was attending Lady Jane on her death-bed : That the claimant was then with her, to whom she always behaved with great tenderness and affection : That the day before she died, she expressed some anxiety to see her brother, and said, that her friends all thought that she was leaving the burden of her child on them, and therefore would not come and see her, but that she committed her child to the providence of God, who, she trusted, would take care of him.” 22, B.

Mr. Loch says, “ That after Lady Jane Douglas’s return from London, he frequently waited upon her, and at most times, when he was with her, she talked always what would befall her child in the event of her death : That, in November 1753, Lady Jane desired the deponent to give her a scroll of a settlement, by way of legacy, of her watch, and several small things, in favours of her son the claimant, in testimony of her great regard for him ; and the depo- 26, B.

“ nent exhibits a scroll that was wrote out, in prefence of Lady Jane,
 “ in favours of the claimant, from which the deponent thinks he made
 “ out a full draught of a fettlement, and gave it to Lady Jane, which
 “ he has been told fhe extended with her own hand, and that it was
 “ afterwards put into a trunk.”

Purf. pr. 297,
 A,

Walter Colvill depones, “ That the deponent was often with Lady
 “ Jane during her laft illnefs: That her fondnefs for the defender conti-
 “ nued till the laft time that he faw her, and that he has heard her ex-
 “ prefs her concern what fhould become of him after fhe was gone.”

Your Lordships have alfo the repeated and folemn affirmations of
 Sir John Stewart in favour of his fon, both judicially, when examined
 in court, and extrajudicially, when on death-bed, declaring before
 God, as a dying perfon, that Archibald and Sholto were the children
 of Lady Jane Douglas.

It was faid by the purfuers, that the death-bed declaration of Sir
 John was unattended with circumftances, and contained only a general
 affirmation of the truth of the birth. But to this it is answered, that
 the fingle thing in view was to acknowledge or difown his fon on
 death-bed; and after having undergone repeated examinations before
 your Lordships, upon the feveral facts and circumftances of the caufe,
 it would not, perhaps, have been fo proper in Sir John to have left an
 extrajudicial explanation of thefe fame facts. A prefumption of filia-
 tion arifes from the dying or folemn affirmation of the parent, that
 fuch a perfon is his child, which is neither made better nor worfe by
 entering into a detail of particulars.

The bond of provision executed by Sir John in favour of his fon,
 is likewise a fpecies of the *tractatus*, which is hardly confiftent with the
 notion of an impofture. If Sir John had originally any fcheme or pur-
 pofe in view, by introducing a fuppoftitious child into his family, he
 muft, by that time, have perceived that his fchemes were frustrated,
 and the defender a very ufelefs incumbrance upon him.—It can hard-
 ly be fupposed that, in thefe circumftances, he would have inclined
 to diftrefs himfelf and his family, by creating a very large provision
 in favour of a perfon with whom he was totally unconnected; yet, no
 fooner had he an opportunity of doing that act of juftice to the fon of
 Lady Jane Douglas, than he feized it with eagernefs, and could fcarce-
 ly be with-held from going much further than his circumftances
 would admit.

The purfuers were pleafed to form a very extraordinary conjecture
 with regard to this bond, to wit, that it was intended as a blind to
 deceive the Duke and Mr. Loch, and that Sir John knew well enough
 it could never be made effectual againft his eftate.

It

It does not appear that the Duke of Douglas ever knew any thing ^{Answer:} about this bond of provision, and what scheme Sir John could have in using this artifice with Mr. Loch, who never entertained any doubt of the birth, is not very conceivable. Mr. Loch depones, " That ^{Serv. 24, E.} upon the death of the late Sir George Stewart of Grandtully, the present Sir John came to Scotland from the Isle of Man, and that the first time he saw the deponent, which was the very day he arrived in town, the first thing he spoke to the deponent of, who was his ordinary doer, was, that as he was an old man, he thought it incumbent on him to execute a bond of provision in favour of the claimant, his son, and desired the deponent to give him a scroll of a bond for that purpose, which the deponent accordingly did: that Sir John executed a bond to the claimant for 50,000 merks, which he wrote all over with his own hand from the scroll the deponent had given him; and that the deponent and his son, together with Sir John's servant, were witnesses: that Sir John at first proposed to grant bond for a larger sum, which the deponent objected to, as being too great a burden upon the estate: that Sir John answered, that he was resolved to provide the claimant, not as a younger son of the family of Grandtully, but as the issue of his marriage with Lady Jane Douglas; and that it was by Sir John's insisting for a larger sum, that the execution of the bond was delayed for some time after Sir John's return to Scotland." — Examined as a witness for the pursuers, depones, " That Sir John, before ^{Purs. pr. 360, D.} executing the bond, proposed that he should give his son 10,000 l. sterling; and when the deponent asked him where there was fund for such a sum? he answered, he had value in woods that would pay all his debts and afford his son a larger sum. Depones, that the bond was given to the deponent by Sir John, to keep for the behoof of Archibald Stewart, his son; and at executing the bond he said, he would, immediately upon the sale of his woods, have his will in making a bond for the full sum he intended to be given to his son, as aforesaid: that some time after the Duke of Douglas's death, upon talking with Mr. Mackenzie of Delvin, who was Sir John Stewart's writer, he, Mr. Mackenzie, said, he thought the bond should be given up, and not made a burden upon Sir John's eldest son; and Sir John some time after talked to the same purpose to the deponent, because he said his son was now far above needing any thing from him, meaning his son Archibald; to which the deponent answered Sir John, that he would give the bond to Mr. Douglas, his son, when he came of age, to be disposed of as he pleased, or put it into the register, but would not part with it other-ways."

From

From the whole of this deposition it is clear, that Sir John's intention to provide for his son was serious and deliberate, and that there was no scheme of imposing either on one person or another, as indeed it would have been extremely idle in him to have subjected himself in a very large debt, for which his rents could have been arrested, and his person imprisoned, merely to serve as an additional argument in favour of the birth. The bond was delivered to Mr. Loch for behoof of the defender. It was a disputed point whether Sir John's debts did not affect the fee of the estate;—at any rate, they affected his person, and the rents during his life, and he had a valuable property in woods, which it was certainly in his power to have cut down.

But, were it possible to figure, that this and every other mark of outward regard to the children was affected, surely it will not likewise be maintained, that the private letters of correspondence between Sir John and Lady Jane, when in situations the most distressful, were intended for the purposes of deception. No person, who reads these letters, can form an idea that they were intended for publick perusal. They have been preserved by the merest accident, having been found, after much labour and search, scattered in trunks, portmanteaus, dressing-boxes, &c.—Michael Beadle, silk-dyer in Southwark, in whose house Sir John lived when confined within the rules of the King's bench prison, depones, “ That Sir John left behind him at this deponent's house, a portmanteau and cloak-bag, containing cloaths and papers, which this deponent detained as a pledge or security for what was owing him. Depones, that about two years after Sir John left his lodgings, this deponent wrote him a letter, signifying, that the cloaths and other things were spoiling, and desiring to know whether he might dispose of them? to which Sir John wrote him a letter in answer, authorising this deponent to sell them, and accordingly he did sell them for 3 l. and upwards. Depones, that upon this sale he separated the papers from the other things, and put them in a bag, where they remained till a long time after Lady Jane's death, when a lusty gentleman came to this deponent's, with a letter from Sir John Stewart, desiring to give him access to the papers, which this deponent accordingly did, by giving him the bag with the papers in it. Depones, that the gentleman continued in the room a considerable time, looking over the papers, and took away with him such as he chose. And the deponent being asked where the said letter is? depones, that he will make diligent search for the same, and if he finds it, will give it to the commissioner. Depones, that the remainder of the said papers remained with him till about two years ago, when he delivered them to Mr. William Gordon of the Middle Temple. Depones, that while the papers were

“ in

" in his custody, no person applied for a sight of them, nor got any
 " of them, except the gentleman before mentioned."

Sir Robert Pollock depones, " That having gone to London in the ^{Purf. pr. 356,}
 " beginning of September, in the year 1761, upon Mr. Douglas's af- ^{K.}
 " fairs, for whom he was then tutor, he, upon a letter from Sir John
 " Stewart, or order, went to a house in the burgh of Southwark,
 " where Sir John had lodged, possessed by a person whose name he
 " does not remember, but is sure he was a filk-scourer; and upon
 " this order, was allowed access to a trunk of papers, belonging to
 " Sir John, then remaining in that house, impignorate, as he believes,
 " for his rent, or other debts; and as the matters now in dispute
 " between the parties, concerning Mr. Douglas's service, was then
 " commenced, he did search these papers as carefully as he could, but
 " found neither memorandums nor letters having the name of La
 " Marre, or any other French name, so far as he can recollect, at
 " them, the whole, or most of them, seeming to relate to a correspon-
 " dence between Sir John Stewart and Lady Jane Douglas-Stewart,
 " his wife, while Sir John was under confinement, within the liber-
 " ties of the King's bench, in Southwark. Depones, that he neither
 " knows, nor suspects, where any letters signed by La Marre are, other
 " than these already produced in the process. And further, that he
 " thinks nine-tenths of the papers in that trunk were cards, or letters
 " from Lady Jane to Sir John, many of which were of a very affect-
 " ing nature."

Lady Stewart depones, " That the deponent received from the present ^{Purf. pr. 357,}
 " Sir John Stewart the letter from his father to him, being No. 7. of ^{F. *}
 " the inventory, at Queensberry house, before the deponent went last to
 " Paris. And depones, that the letter from Madame Tewis, being
 " No. 6. of the inventory, and two from the Chevalier Douglas,
 " being No. 4. and 5. and a letter from Mr. Robert Keith, and cer-
 " tificate by him, being No. 8. and 9. were first shown to the depo-
 " nent in November 1763, at Sir John Stewart's house of Murthly,
 " by one Alexander Stewart, Sir John's own servant, when he was
 " about to leave his service, and was delivering up his charge, which
 " letters and others were lying in an old trunk, under that servant's
 " charge, and wherein he was in use to keep shoe-brushes, deers grease,
 " &c. and the deponent, after reading the letters, &c. took them in-
 " to her own custody. And depones, as to the three first articles of
 " the said inventory, that she found them in a letter-case, or writing-
 " box, which was lying below an old cabinet in the house of Murth-
 " ly, in a room where the said servant used to keep his master's
 " things; and that this was found in the spring following: That
 " there being no key to the box, that the deponent could discover, the
 " deponent:

“ deponent broke it open, and found as above ; that thereafter, when
 “ the deponent came to Edinburgh, she shewed the above writing-box
 “ to Mrs. Hewit, and asked, if she knew to whom it had belonged ?
 “ who answered, after some pause, That she knew it was her angel’s,
 “ meaning Lady Jane Douglas’s, and being in her possession after La-
 “ dy Jane’s death, she gave it to Sir John Stewart, as being the only
 “ thing she had of Lady Jane’s to give him.”

These letters appear to have been wrote when Sir John was under confinement in Southwark, and Lady Jane living either in St. James’s place or Chelsea with her family, or in Scotland. They exhibit a scene of distress which is seldom to be met with. The sentiments which they contain are such as must satisfy every impartial mind, of the probity and worth of those unfortunate persons. In every one of them the children are mentioned in terms the most natural and unaffected. In order to form a proper idea of this correspondence, the whole of it ought to be read together, and it is impossible to do so, without being absolutely convinced of two things, 1st, that the letters were never intended to be shown ; and, 2dly, that Sir John and Lady Jane were the real parents of the children.—To insert the whole of them in this memorial, would swell it beyond all bounds, and therefore a few of them shall only be appealed to.

Def. pr. 822,
 F.

Letter Lady Jane to Sir John, dated Saturday morning, “ Dear
 “ master Stewart, good morrow to you, according to Lord Blantyre’s
 “ stile. I hope, by the letter I am expecting every moment from you,
 “ to hear that your cold is absolutely removed, in that case, I beg
 “ you to be thankful to the great Bestower of all good, who daily
 “ loads us with his favours. The colds at present, which scarce any
 “ have escaped, are so much more severe than that you complained
 “ of, makes me write the little exhortation above, to put you in mind
 “ of gratitude to our great Benefactor ; though you may justly say that
 “ remonstrance was needless to you, who are always so sensible of fa-
 “ vours received from friends ; our Almighty Friend cannot then be
 “ forgotten by one who has such sentiments as yours. I inclose here
 “ the card I received in return to mine from captain Wilson and his
 “ lady ; I am to make enquiries after her health, and a proper excuse
 “ for your not coming immediately to wait on him. The town
 “ continues as dull as I am, affording not one thing worthy the pains
 “ to write, or you to read ; yet I can tell you what will please you
 “ beyond every other thing, that our dear little ones are well ; poor
 “ Mrs. Hewit also begins to mend.”

Lady

Lady Jane to Sir John, dated Thursday. " Dear Mr. Stewart, pray Def. pr. 832
 " don't pay me so many compliments in my doing what is just and B.
 " right, and what shall ever afford me so much pleasure. I am glad
 " you have hopes of every thing's coming out to your wish. I never
 " can allow myself to doubt of success at last ; these delays are only
 " permitted to acquaint us with the virtue of patience and resignation ;
 " things so useful and amiable, who would not be put at any age to
 " such a school ? I'm glad you have got acquainted with so agreeable
 " a gentleman ; you do well to cultivate it. I send the history of
 " Douglas. I send a bit of velvet, and a snuff-box for a little rapee,
 " which I am quite out of. Send it back any time to-day or to-mor-
 " row, only quarter filled. I'm invited to-morrow evening to Lady
 " Tyrawley's ; if you chuse to be there, it is well, but, if affairs of
 " great moment comes in the way, don't come. We're all mighty
 " well, and the little men very much so, blessed be God. I take a-
 " bundance of care of myself and of the dear little ones, as you may
 " well believe. Pray take my example of being careful of yourself.
 " I have nothing new to offer, only Madam Hewit was at the ball on
 " Monday : if her curiosity for these things can be reckoned new ;
 " she underwent many hardships and difficulties that night, by the
 " excessive cold and great crowd, but has luckily got the better of all ;
 " she says they are a very amiable family, and is fallen in love with
 " King George."

Lady Jane to Sir John, dated Thursday evening. " I received your letter —p. 836, A
 " yesterday, and by it I perceive your spirits are depressed, which a great
 " deal mitigates the joy and satisfaction your letters usually give me. No
 " wonder you are discouraged, and quite tired out of patience, with your
 " lonely disagreeable quarters, and many other unlucky occurrences, but
 " are all these in common with other human creatures, sufficient mala-
 " dies to sink the spirits, or to harbour the smallest murmuring, as if too
 " rigorously dealt with ? We have made mighty small progress in look-
 " ing inward, and in judging a-right of ourselves, when we frame
 " such a conclusion ; for certain it is, we have many more blessings
 " and benefits that call loudly for our acknowledgments to Almighty
 " God, than cause of complaint. For my own part, after many times
 " considering the situation of all around me, even of those counted
 " the most happy ; and, upon this reflexion, looking home into my-
 " self, I find I am possessed of more happiness than any I have yet heard
 " of, or can fix my eyes upon any where abroad ; so then, dear Mr.
 " Stewart, learn to be contented, and absolutely resigned to the di-
 " vine Disposer of all things, and then I can assure you your mind
 " will

“ deponent broke it open, and found as above ; that thereafter, when
 “ the deponent came to Edinburgh, she shewed the above writing-box
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 " of, or can fix my eyes upon any where abroad ; so then, dear Mr.
 " Stewart, learn to be contented, and absolutely resigned to the di-
 " vine Disposer of all things, and then I can assure you your mind
 " will

" will obtain perfect quiet and happiness, and at the same time be in
 " the more proper and probable way of having your wishes and heart's
 " desire accomplished. This is a long sermon; you'll say I delight
 " in preaching, when I can't forbear it, even when you desire me to
 " send you Pere Chemeine, who can so much better exhort and teach.
 " I send him to you with great joy, and your desiring him, though
 " contained in a mighty small volume, gives me infinite satisfac-
 " tion. Dutchess Wharton and Countess Wigton were with me yester-
 " day. The Dutchess enquired very obligingly after you; and for the
 " Countess you are prodigiously in her favour; she really speaks of you
 " on all occasions with uncommon friendship and concern. I'm ex-
 " cessively glad that the good baron continues in better health; I sin-
 " cerely wish him every thing that is prosperous and happy; offer him
 " my best respects, as Mrs. Hewit does, and most affectionately to
 " you. Adieu, dear Mr. Stewart, be you but happy and easy, and I
 " am extremely so. Mrs. Hewit continues on the mending hand,
 " but has been extremely ill, particularly with a sore throat, which
 " she still complains of. I mention this the rather to you, that you
 " may guard as much as possible against colds, for they are very fre-
 " quent and very obstinate at present, especially sore throats, and of
 " a kind not known in England till within these seven years; but I
 " don't hear they are dangerous, though tedious in curing. The
 " children are very well I bless God. Receive five shirts, and send
 " some more by the bearer, that they may be mended. You are very
 " unkind that you don't write the letter I begged you to do for me,
 " nor have you returned the letter to me, so that I can neither
 " answer it by your means nor my own."

Def. pr. 838,

8

Dated Friday evening. " Dear Mr. Stewart, having wrote to you
 " this evening already, and designing to see you the beginning next
 " week, I refer every thing I have to say to you till then, only I must
 " here assure you that I am highly pleased with your wise and prudent
 " letter; and certainly to be patient and calm under every calamity,
 " even those of our own acquiring, is the religious and wisest part. But
 " I must confess I am a little uneasy to find you so much upon the
 " supposition, that I took any offence at the heat with which you
 " spoke the other day. Lay all these anxious thoughts aside, dear Mr.
 " Stewart, and believe once for all, that nothing gives me pain or dis-
 " quiet, but the fears I sometimes have of your being disheartened for
 " little cross accidents; assure me you never will be any more so, and
 " then I'm perfectly happy.

" I have this day received a most obliging letter from the baron,
 " with assurances of his repaying me what he owes, whenever he re-
 " ceives the money which is promised him. The letter pleases me
 " much ; if I don't bring it myself on Tuesday I shall send it. A-
 " dieu, dear Mr. Stewart. The children and we are all well, blessed be
 " God, and very happy, only somewhat poor, which I only regret,
 " because I cannot send you even pocket-money, but we'll grow rich-
 " er ; and in whatever state I am in, I ever am, &c."

Dated Tuesday morning. " Dear Mr. Stewart, You may judge how ^{Def. pr. 342,}
 " low money-matters are with me at present, by this most scurvy poor ^{F.}
 " half-crown I send you ; I'm quite ashamed of it, and, to conceal it
 " from my servants, I have inclosed it, well wrapt up in the pretty
 " little money-box, which ought to contain gold. Wish to heaven I
 " could send of that useful, but rare metal with us. This poor bit of
 " silver I send, just to procure you a little rapee. Don't be in pain
 " about money, the time of day rules come, for then I'll pawn
 " my coat, rather than you should want money, for coming out eve-
 " ry day as long as these days of freedom last ; keep but up your
 " spirits as I do mine ; I am perfectly content and easy as to myself ;
 " all my distress of mind is for you, lest you should be discouraged ;
 " and, for the valuable baron's melancholy situation, pray God
 " soon to deliver you both out of all your troubles ; offer him my
 " respectful compliments ; you shall hear again from me this week.
 " The children are well. Mrs. Hewit sends you her compli-
 " ments."

Dated Thursday, March 5. " Dear Mr. Stewart, I have this mo-^{-p. 841, C.}
 " ment the pleasure of your letter by your messenger ; this and all
 " your's are very welcome and agreeable to me ; but the paragraph of
 " some of your late letters, and in this last one in particular, upon
 " religious matters, absolutely charm me ; go on, dear Mr. Stewart,
 " fix your eyes, your hope, and trust above, and all worldly concerns
 " will soon seem perfectly easy, nay will, in reality, become so ; for
 " God never disappoints those that entirely depend on him, nor
 " will he continue to afflict, when we fly to him for succour, and
 " place our whole happiness in his favour alone ; allow me to send
 " you by the bearer a favourite book of mine, Thomas a Kempis ;
 " read it, I beg you, in it you'll discover so much heavenly, and
 " even worldly wisdom, that it never fails to please both the spi-
 " ritual and temporal mind, and to instruct both. Your letters
 " by Greenly I received yesterday ; they were most acceptable
 " to me ; he would tell you the reason why I could not send sooner
 " to you than Tuesday last, and that I was obliged to employ him
 " 4 H " to

" to carry my letter to you ; and likewise yesterday gave him a
 " packet, I believe, from your son, to carry to you to-day, John being
 " not yet able to go out ; but against Saturday I design to send him, if
 " better. You imagine, because I happened to say in one of my letters,
 " that I took uncommon care of my health, that on that account I am
 " become low-spirited ; nothing is farther from me, I bless God, than
 " low spirits ; many years ago they were not near so much so ; yet I
 " do think, and must think, that my life at present is, and ought to
 " be, more my concern than formerly, because I have you and the
 " children to care for. Is that a reason to think that I am become
 " low-spirited, because I would like to live some time longer for your
 " sakes ? The end of the week, or beginning of next, I shall write
 " more fully on every thing ; in the mean time, dear Mr. Stewart, a-
 " dieu, I ever am most tenderly and affectionately yours. Excuse this
 " confused letter, unwilling to keep your man, because of so many
 " idle people that walk about, and the poorer sort that meet with
 " such people, are worse used than the rich, in resentment that they
 " can get nothing from them. The children are very well, I bless
 " God ; Mrs. Hewit is better of her sore throat, but is now attacked
 " with the tooth-ach ; she is much, most faithfully yours. Offer my
 " respectful compliments, and hers, to the Baron."

Def. pr. 843,
 A.

Dated, Chelsea, Tuesday. " Dear Mr. Stewart, how did your last
 " letter, dear Mr. Stewart, affect my heart ! where you tell me, you
 " subsisted for so many days on the small remains of our little dinner,
 " and not wherewith to send even for porter ; and this all owing to
 " your parting too freely with your few shillings to me, which I
 " took from you with regret ; no wonder, since I could so much
 " easier get a supply where I am, than you possibly can in your
 " confined quarter. But, dear Mr. Stewart, cheer up, for I hope
 " very soon to bring you as much money as shall make you a-
 " bove these pressing painful necessities ; and in a little time, I hope
 " kind indulgent providence shall set you and I above our pre-
 " sent inconveniencies, which by the way only give me pain, be-
 " cause I know your spirit cannot easily bear up under them : but,
 " believe me, the only way to get soon rid of any calamities, is to be
 " entirely resigned, patient and submissive, during the duration of
 " them ; such a disposition is certainly pleasing to heaven, and pro-
 " vides for after happinesses, even in this life. The very well-tim'd
 " supply Mr. Farquhar gave you, of which you sent me too large a
 " share ; I shall never forget that kind proof of his friendship, and I
 " need

" need not put you in mind to make it up to him an hundred-fold
 " when in your power, which, I hope, shall soon be the case. I
 " did not chuse to write last Sunday, tho' we were all well. Dear
 " little Archy has had a little cold, with a small degree of a fever; but,
 " blessed be God, 'tis now in a manner quite over: Don't be angry
 " with John for not mentioning it to you; he could not indeed do it,
 " as I knew nothing myself of the child's being ill, till after I had
 " given him orders to go early in the morning to see how you were.
 " I must own, when I perceived the child hot, and, as I thought, in
 " danger of taking a fever, or the small-pox, I felt a pain and distress
 " of mind not to be expressed: I slept not a wink for a whole night,
 " and was not without great anxiety the next day, tho' he was grown
 " considerably better: and now, all is, I think, over, blest be God;
 " and so, would not have mentioned it to you, but to convince you,
 " that no outward bad circumstances can in the least disquiet or dis-
 " compose me; only what concerns you, dear Mr. Stewart, and these
 " two little babies, Archy and Sholto, robs me of rest and ease. Let
 " this persuade you to take care of your health, and to bear up with
 " fortitude under the present frowns of fortune, which will, more
 " than any other thing, oblige your ever tenderly affectionate. I
 " send you a little tea, and few stakes; a fine present indeed, but all
 " in good time, better will come after, if we'll have but patience.
 " Return the little canister, because it belongs to a tea-chest. Four
 " o'clock afternoon, Archy's now so well, that he's playing in the
 " garden. Mrs. Hewit sends you her kind compliments; begs to
 " know if you have got her spectacles set in silver, which she got
 " from Mrs. Cockburn, thinking, perhaps, you might by chance have
 " taken them in place of your own. Archy's just come up stairs, and
 " desires me to send you his humble duty."

Lady Jane to Sir John, without a date.—" I bless God the children Def. pr. 844
 " are in perfect good health; so you may judge how surprised I was F.
 " upon receiving yours.—Your little messenger must delight in telling
 " painful stories; however don't chide the boy, for it was only a
 " mistake.—I inclose here a letter I got yesterday when I was in town.
 "—I hope the Baron has got rid of his cold—offer him my respect-
 " ful compliments—in haste, going to church. Dear Mr. Stewart,
 " ever yours."

Dated Monday morning. " Dear Mr. Stewart, yours this moment re- Def. pr. 845
 " ceived gives me a great deal of joy and satisfaction, as mine gave you A.
 " yesterday morning, contradicting the unaccountable story the silly boy
 " your messenger had brought you. I am amazed how it could come
 " into

“ into his head to frame such a lie; for the children were playing in the
 “ garden with the woman that spoke to him; however, you was much
 “ in the right not to scold him; and I beg you never may, it is not
 “ worth while. I’m extremely glad to hear that the fluxion in the
 “ Baron’s cheek is better; offer him my best and most respectful com-
 “ pliments. If you think well of it, I shall send John from time to time
 “ to you with my letters; ’tis but giving him now and then a pair of
 “ oars, and that’s a little expence, better bestowed, than, at a greater,
 “ to hire a boy that commits such horrid blunders: so you may ex-
 “ pect John to-morrow in the morning, and you may keep him to
 “ write an answer by as long as you please. This place affords no en-
 “ tertaining thing to write; only we’re all very well, blessed be God;
 “ which is indeed the best piece of news I can send you. The chil-
 “ dren are vastly happy just now, in diverting themselves in the gar-
 “ den. Mrs. Hewit sends you her affectionate compliments. And
 “ I am ever, dear Mr. Stewart, intirely yours.”

Def. pr. 860,
 A.

Dated Hope-park, 15th November 1752. “ Dear Mr. Stewart, I
 “ received your letter last Tuesday, and would have answered it the
 “ very next post, if I had had any thing material or mighty satis-
 “ factory to say; but as that does not happen to be the present case
 “ (but in due time it will come) I delayed writing till this post, last
 “ week the holy sacrament being given in Edinburgh, in all the
 “ churches, which is just in my neighbourhood. It grieves me beyond
 “ measure, dear Mr. Stewart, that you’re so low in money, and that
 “ I have as yet got none to send you; especially, as the time of your
 “ getting some liberty is so near approaching. I’m truly disquieted a-
 “ bout this, but to help it is at present entirely out of my power. How-
 “ ever, I’m not idle in endeavouring to raise a small sum (a great one is
 “ impracticable) and when I’m happy enough to accomplish it, you
 “ shall immediately share in whatever it is. In the mean time keep
 “ up your spirits, which your letter assures me you do, which charms
 “ me, as all of it does, save that part of it relating to money-mat-
 “ ters. As to your anxiety about my living in the country, imputing it
 “ entirely to oeconomy, which I do assure you is the least consideration;
 “ my dear childrens and my own health being the chief motive that
 “ made me leave Edinburgh, neither they nor I agreeing with the
 “ place. We were truly indisposed almost all the while we were in
 “ town; and Sholto had a little fever upon him when I brought him
 “ here: He is now, I bless God, very well and hearty; but it was full
 “ time to leave a place that impaired our health; but for all that, I
 “ made no great haste to leave it, being eight weeks in town, lodging

" in the best house in it in Bishop's land, where I saw all my friends
 " and acquaintances that were then in town; nor will they grudge to
 " step a quarter of a mile out of it to see me here, and when I choose
 " to wait on them, a chair can convey me in five minutes."—In a post-
 " script subjoined, she says, " Archy and Sholto send you their humble
 " duty, they speak frequently of you, and are perpetually writing
 " letters to you, especially Archy, it is his chief employment."

Dated Hope-park, 18th November 1752. " Dear Mr. Stewart, I ^{Def pr. 86r,}
 " received the pleasure of your letter of the 11th yesterday, in which ^{F.}
 " you complain of my being become mighty lazy. I confess, I did
 " not write for six days, but that was occasioned by the holy sacra-
 " ment's being given in all the churches of Edinburgh, which solemn-
 " nity I had the honour to attend; so my not writing proceeded from
 " no unkindness nor carelessness about you, dear Mr. Stewart; and
 " pray observe my present punctuality in answering your last letter,
 " this being the day after I received it. I'm truly vexed as you are, and
 " very uneasy, that have so long been in expectation of hearing from
 " Lundie, and still have expected in vain: his long stay in Ireland is
 " surprising: I wish all matters that took him there may be going well.
 " I'm glad Johnston is come to reasonable terms: how much then
 " must my anxiety and concern be, that you cannot profit of her
 " being brought to a better mind. I'm much rejoiced that good
 " Mr. *Mackercher*'s affair has so good an appearance. I sincerely
 " wish him all manner of success and good fortune, as he certainly
 " is a very singularly valuable man, give him my best compliments.
 " I went to the assembly this last Thursday, the King's birth-day
 " being solemnized here on that day, because the week before was set
 " apart on account of the holy sacrament. I deal not much in publick
 " diversions, it would ill become me as you're in confinement; but
 " our dear little ones, and I as well as you, are under such great obli-
 " gations to his Majesty, that I thought it my indispensable duty to be
 " present on the day that was appointed for solemnizing his birth-day,
 " that I might, by that demonstration, express publickly to the world,
 " the sense I have of his Majesty's great goodness to me and mine;
 " and, for that reason, I took the children along with me; and I cannot
 " really express the warm and kind reception we met with from the
 " whole assembly, which was extremely crowded and full of company.
 " Archy and Sholto behaved to a wonder, and were caressed beyond
 " measure. I thought the people would have eat them up; and very
 " many that I did not know, complimented me upon their account,
 " and upon my being returned to my own country; so that I wanted
 " nothing to make me perfectly happy on this occasion, but your be-
 " ing there to share in my satisfaction, and so to make it compleat."

Towards the end of the letter she says, " Archy has his humble
 " duty, but Sholto is not at leisure to send you any ; he did in my
 " last ; he is, blessed be God, quite well again, as we are all."

Def. pr. 912,
 F.

Dated Friday evening. " Dear Mr. Stewart, your seeming to be so
 " much on the melancholy turn in your last letter, gave me a confi-
 " derable uneasiness, of which I have not yet got the better ; why will
 " you allow your spirits to sink, dear Mr. Stewart ? It is that alone
 " that gives me pain, and when I think that your mind is easy, the
 " little difficulties we are in at present gives no manner of disquiet,
 " save your confinement, and my seeing you so seldom ; that is indeed
 " shocking, but it is hardly to be bore when you sink under it. Pray
 " then keep up your spirits, if not for your own sake, for mine ; let
 " this be an argument to persuade you to bear well up under all your
 " distresses ; if you don't, you will assuredly distress me, more than all
 " my calamities have hitherto done ; for, to say the truth, when I
 " look around, I see and hear of so many people much more unhappy
 " than myself, that I really think I am a great deal more fortunate in
 " many things than others are, or than I deserve to be. I inclose here
 " five shillings, employ it in giving me the satisfaction of a visit on
 " Monday or Tuesday next. The children and we are all mighty well,
 " I bless God.

It would be endless to recite them all. The children are constantly
 introduced, and seem to have been their only topick of consolation. In
 821, C. one dated Sunday night, she says, " the children, I bless God, are very
 " well, and drank your health, when it was told them it was your
 826, B. " birth-day."—In another, " the children and I are well, as I hope you
 " are. The ladies were highly pleased with Archy and Sholto, and
 " they behaved mighty well, so you see they are not spoiled."—
 835, B. In another, " I write this now, to make apology for that appearing
 " neglect, and to know particularly how your cold is, as every body
 " complains they are very obstinate this season, and I'm afraid you
 " are not so careful of yourself as you should be, and, alas, I am not
 " near you to take that care which I could wish to do, and which I
 " am sensible you want so much ; therefore, dear Mr. Stewart, let me
 " beg you, for my sake, and *for the childrens*, to neglect nothing that
 " you think will contribute to remove your cold before it gets too fast
 " a feat, which, if it does, will with great difficulty be removed."
 842, G. Chelsea, Friday evening. She says, " the children often talk of their
 " dear papa, and are impatient to see you."—In another, dated Mon-
 847, F. day evening, " you may justly think I am at much pains and care
 " about myself : I truly think so too ; but that does not use to be my
 " fault ; only, of late, I begin to be mighty dainty of myself, because
 " I think my life, in the present unhappy posture of our affairs, may
 " be

" be of some use and service to yo and the children ; this is all my
 " anxiety for living, and the cause that forces me to take such care
 " of myself."

Friday night. " The children are very well, I bless God, which is
 " the best news I can send you." Def. pr. 849,
 D.

From Edinburgh, 3d September 1752. " The children, I bless
 " God, enjoy perfect health, and are in good spirits. They are migh- 853, C.
 " tily caressed here. Little Archy is thought very like you."—From
 ditto, 20th September 1752. " This day Archy and Sholto are be- 854, E.

" gun to learn to read, by one Warden, recommended by the Coun-
 " tefs of Stair, as one that teaches well, and brings children forward
 " in a short time.—I told them I was writing to you, and they both
 " prayed me to give their duty to their papa."—In her next, " My 855, D.
 " dear little ones have also had a severe cold, but are now quite well
 " again."—In the next, after saying that she had nothing material to

write him, she proceeds, " the children, blessed be God, have entirely
 " got the better of their late cold ; which is one particular you'll think 856, B.
 " worth reading."—In her next she mentions her being in good 857, A.

health, " as our dear little ones are, only dear Sholto has yet a
 " small remains of his cold, but I am hopeful it will soon remove,
 " now that he has the benefit of this fine country air."—In the
 same letter she says, " I have wrote a most affectionate, and even a
 " most submissive, letter last Thursday to my brother ; what the re-
 " sult may be, I cannot yet determine ; when I can learn, you shall
 " be informed ; in the mean time, keep up your spirits, and trust in
 " God's great goodness as I do, and, as I am, be entirely easy and
 " happy. I really am strongly impressed, that we shall soon get some
 " deliverance out of our present calamitous state, but whatever hap-
 " pens, I am wholly resigned and satisfied ; since you are in good
 " health, as I and our little ones are, what cause have we then to
 " grieve ! put that far from you, I beseech you, dear Mr. Stewart."

Hope-park 6th November 1752. " Archy and Sholto prayed me
 " to send their duty to their papa ; they speak, poor things, frequent- 859, F.
 " ly about you, which is surprising enough, considering how little
 " they have seen you of late."—In a letter dated Saturday, " be very
 " careful of your self in this unwholesome weather ; we're all well here,
 " and the little ones to a wish, blessed be the goodness of Almighty
 " God to us on all occasions. A thankful humble heart is a just tri-
 " bute to the great and good Being that continually preserves us, and
 " loads us with unmerited benefits."

Tuesday, four o'clock. " The two little men are mighty well, blef- 907, E.
 " sed be God, but are somewhat restless in the night-time, owing to
 " the

- Def. pr. 921, B. "the immense heat."—Friday morning. "This place is an agreeable solitude, but noways irksome to me, having always loved a country-life; besides, the children are so charmed with it, that it more than makes up the want of company, a great deal of which I never was mighty fond of: I only regret, when I sit down to write to you, that I have nothing to entertain you with. The children are very well, blessed be God."
- 921, F. Tuesday morning. "The little men and I continue, blessed be the constant goodness of Almighty God, very well; may you always be so, and always resigned; then every happy and good thing will necessarily follow to a mind so composed and so submissive to the divine decrees."
- 924, B. In letter dated Thursday. "The children are charmed with this place, and are mighty well, blessed be God."—In a letter, Chelsea, Friday noon. "The children are very well, I bless God, and agree hitherto mighty well with this place, and are almost always in the garden. You need not send them any toy, but, if you will needs do it, let it be some mere trifle, for at their age they break every thing."
- 942, C. Hope-park, 18th January 1753, she writes: "The best news I have to write is, that dear little Archy and Sholto are in good health and perfect good spirits; they are often speaking of you."—In her next letter, "The children are very well, I bless God, and speaks often of their dear papa; Archy writes letters to you many times a-week; he desires me to give you his humble duty, as Sholto does."
- 943, C. 27th February 1753, she says: "I shall write again when I have more to say; at present I am not furnished with much; only Archy and Sholto are very well, which makes me happy, as I'm sure it will make you; and I am in good health and in good spirits, as I hope in God you continue to be; the thoughts of which is my best cordial, and a rich one too, though in other things not in mighty affluence; but I trust in God's goodness, that you and I shall be provided in what is necessary to make us live easily, though not in great wealth."
- 949, C. 28th March 1753, she writes: "Archy and Sholto are very much abroad; they prayed me to make their compliments to you when they saw me writing to you."—Newcastle, 20th April 1753. "I have left my dear little ones behind, so you may judge my stay in London will not be long; they are in good health, I bless God."
- 952, F. 23d August 1753. "Archy, I have reason to be very thankful, is in perfect good health, he dwells almost constantly without doors, so gets air enough about his ears."—In the next, she says: "Dear little Archy is very well, and often employs himself in writing to you, in

" in which he takes the greatest pleasure."—And in the next she says, ^{D. f. pr. 954,}
 " Archy is very well, and desires me to give his compliments to his ^{B.}
 " dear papa."

Sir John's letters to Lady Jane are no less remarkable upon this head.
 —The first that occurs is one without a date, in these words: " Dear-
 " est Lady Jane, as I have had such proofs of your disinterested and
 " grand sentiments, I hope now that hard, (and, I must think,) unde-
 " served, fate, has done its worst; I hope the same constancy of mind,
 " with your christian resignation and philosophy, will support your
 " magnanimity in this trying stroke, of all these virtues summed up,
 " my dearest lady, please remember it is no fault to be poor; I would
 " chuse to be honourably so rather than purchase riches at the expence
 " of it. This cloud will soon disperse, we have reason to hope, and will
 " prove but a whet to make us relish the more better times, when God
 " pleases to send them. I am entirely resigned to his will, and can
 " bear every cross with patience; but being kept from the pleasure
 " and happiness of being with you, and even in that I am supported
 " by hopes, that our separation can be of no long continuance, which
 " I have reason to expect from many different views, any one of which
 " will put an end to the only misfortune I regret, providing you are
 " easy till that happy period."

868, A.

Sir John to Lady Jane, 16th October 1752,—53, says, " My dearest
 " angel, in the hurry I was put in writing my last, or rather the post-
 " script to it, I had not time to make answer to any one thing con-
 " tained in your's, which gave me much pleasure, and at the same time
 " much more pain for my dearest Lady Jane; at the same time you
 " tell me the dear little men are recovered of their cold, and are going
 " every day to school, I learn the distress you have been in, which
 " must not have been small, since obliged to such violent remedies, as
 " an emetick and a doze of salts, and as yet not certain you are
 " well."—The letter contains a variety of other particulars concerning
 Lady Jane's health, her scheme of living in Yorkshire, &c. and he
 concludes with these words: " God bless and preserve you, and your
 " young ones to be the comfort of your tenderly affectionate—And in
 " postscript he adds many kisses to the dear little men, with my bless-
 " ing to them and you."

869, E.

871, B.

In his next he says, " Dear little Stewarty's being so very well, will
 " be a great cordial in your distress; God grant he be long a comfort
 " to his dear mamma, and make up for all her misfortunes and disap-
 " pointments.—He concludes with his blessing to dear little Archy."

871, E.

872, E.

In the next, " I am well pleased to hear you breed up dear little
 " Archy so hardily; I was afraid, till I was told so, that the mamma's
 " tenderness centering now in him only, would have had a contrair

873, E.

“ effect ; but this is judging much better. I hope that before now
 “ you have wrote to the south-west, and should be glad to know
 “ news from that precarious quarter.” He concludes with “ his
 “ blessing to dear little Archy, and affectionate regardful love to Lady
 “ Jane.”

D. f. pr. 875,
 B.

His next letter, dated London September 24th, 1753, says, “ God
 “ be thanked, dear little Archy keeps well, and that his dear mamma
 “ gets well, as health is the greatest of temporal blessings ; other good
 “ things I think are at hand ; my blessing to the dear little man.”

875, F. His letter, of date 2d November 1753, contains the following para-
 graph: “ I am glad dear little Archy is well again, for by Mrs. Nelly’s letter
 “ I find he has had a cold. I can guess the meaning of your long letter
 “ to the west was paving the way to a r——nt, which I think is to be
 “ endeavoured by all means, save that of giving up certain papers,
 “ which concern you, and only you, and that others can have no bu-
 “ siness with, but to have you yet more under hatches, and, by the cruel
 “ use which is made of the power already over you, it is very plain,
 “ that adding to that power would be hurting your dear self, and poor
 “ dear little Archy, in the most essential points ; but all this your Lady-
 876, C. ship knows much better than I, or any other.” He concludes with
 his blessing to dear little Archy, as usual.

In letter 13th October, 1753, he advises Lady Jane to use exercise
 within doors, by sitting on a dale board, placed between two chairs ;
 940, D. and he concludes as follows : “ I should wish to hear that Archy was
 “ beginning to be made somewhat of a scholar ; God be blessed he
 “ keeps his health, that is the chief thing ; when he is put to school,
 “ see that the master may have a right way of teaching, for much de-
 “ pends on that. I have had a cold for some time, but am almost
 “ well of it. Please make my compliments to good kind Mrs. Nelly,
 “ Mr. Eccles, and good Mr. Gusthard ; my blessing to dear little
 “ Archy.”

“ N. B. The longer the dale board is that you sit on, the more
 “ play it will have, consequently, the greater advantage will be found
 “ from the gentle exercise. Give some attention to this D. L. J.
 “ for I assure you it is almost as good as riding, so do it frequently,
 “ and the longer you continue the better. Archy will sit with you,
 “ and share of the ride.”

941, D. 20th October, 1763, he sends his blessing to Archy, in two dif-
 ferent parts of the letter.

Even Mrs. Hewit’s anxiety and regard for the defender, as the son
 of Lady Jane Douglas, appears conspicuous from her letters in process.
 959, B. In April 1754, she writes to Sir John: “ Dear Sir, I had the pleasure
 “ of yours two posts ago, but am so very ill, is scarce able to dote a few
 “ lines,

" lines, only could not refer telling you, that I hear Lady Shaw intends
 " to cause inoculate Archy in a week or two; they say that you've
 " given your consent to it; you know best if that is true. May Al-
 " mighty God preserve the child, for the terror and fright of him is
 " adding greatly to my distress; and his poor *mammie* * is in no less trou-
 " ble, as she, to be sure, will not be allowed to attend him. God forgive
 " Lady Shaw for her cruelty to her; and I think you should write to
 " Lady Shaw, and tell her how much you are assured of her ladyship's
 " great care about a life of so much consequence, and a life that you
 " rely so much on; and no body can write more prettily upon all sub-
 " jects than you can. I am much to be pitied, that gets not so much
 " as a sight of my dear lamb: he sends me many compliments, and
 " tells they will not let him come to me. May it please the Almighty
 " God to bring him safe through, for it was what his dear mamma
 " would never go in to.—Now, as for the inventory of what is lying
 " in Grinlay's hand, I am not able to go thro' all to look for it, but
 " shall when I am better. He has the double of it, and I believe will
 " be honest. And as to that part, the getting so much upon Lady
 " Jane's things was the hardship, and she was positive to have up
 " her box; for the other trifles she would never have been at the
 " pains to relieve them, as they did not draw her above seven
 " pounds when disposed of; she relieved her watch, which came
 " to fifteen or sixteen pounds. So you may judge, after all these out-
 " givings, what she brought home, just four guineas, her watch she
 " left to Archy."

These letters, taken by themselves, and without the aid of any o-
 ther proof, are sufficient to overbalance that volume of negative con-
 jectural circumstances, which the pursuers have spent four years in
 collecting.—People who are carrying on a fraud, may be supposed to
 assume appearances in their behaviour to third parties; but that they
 should study to impose on each other in their private correspondence,
 is a degree of refinement which will not be presumed.

The council for the pursuers were so sensible of the weight of evi-
 dence arising from these letters, that they seemed in the pleading to
 be at a loss in what manner to treat them.—One of the gentlemen fairly
 admitted, that the sentiments contained in them were genuine, and
 that they afforded strong evidence of a *real affection* on the part of Sir
 John and Lady Jane to the children; but this he endeavoured to account
 for on the principle of *adoption*, and he insisted, that it was natural
 and proper for Sir John and Lady Jane, after having robbed these
 children of their real parents, to feel the same regard and tenderness
 for them, and to behave to them in the same manner, as if the chil-
 dren had truly been theirs.—The justice of this remark is submitted

to

* She means Isobel Walker.

to your Lordships.—It is at least allowing some little degree of merit to Sir John and Lady Jane, to suppose, that after having committed so great a crime, they had still such delicacy of sentiment remaining.—But, with submission, it is thought, that the feelings here attributed to Lady Jane and Sir John, are altogether beyond nature, and are at least entirely inconsistent with the well-known impetuous character of Sir John Stewart.—The great additional distress which these children had brought upon them, ought rather to have created disgust than affection, and would certainly have led Sir John to take the first opportunity of getting quit of the burden; but, in place of that, he continues to the last to behave to them with that steady and proper affection, which it was unnatural for Sir John Stewart either to have felt or expressed, if he was not the father of these children.

It was further insinuated, that a partial production had only been made of these letters, and that others, relating to the suspicions which prevailed about the children, and the mortifications Lady Jane had met with, may have been kept up.—But, if the pursuers had attended to the interlocutors of the court, this argument would not have been used.—After they had five different times examined Mr. Brown, the defender's agent, in an exhibition of writings, and after many writings had been accordingly produced, they, in August 1765, petitioned the court to have him again examined for exhibition of the whole letters between Sir John Stewart and Lady Jane Douglas, or other papers found in their different repositories, which might in any way tend to fix dates or places, where Sir John and Lady Jane had been at particular times, or any other matters controverted between the parties.—This petition was remitted to Lord Kennet, before whom they gave in interrogatories; the two first of which relate to letters, notes, memorandums, &c. concerning their journeys, places of abode, between August 1746 and November 1753, circumstances, money-transactions, or mentioning any thing relative to the birth, further than the notes formerly produced.—The fourth calls for all letters and writings, concerning their taking proofs, or being advised to take proofs.—The fifth is in these words: “Have you any letters tending to show, that a suspicion had arisen in Britain, concerning the truth of Lady Jane's delivery? at what time the suspicion was entertained? and by whom? particularly to Walter Colvill, respecting this matter? —The eighth relates to La Marre and his letters.

The interlocutor of the court was as follows: “On the report of the Lord Kennet, the Lords restrict the two first articles to these of money received by Lady Jane or Sir John, or any circumstances in relation to the childrens birth, or which make mention of the children;” and

“ and ordain the papers or excerpts thereof to be produced, so far as
 “ relates to these particulars: appoint the said two articles, so restrict-
 “ ed, and likewise the articles 4th, 5th and 6th, to be put, but con-
 “ fined to a date prior to the service: refuse to put the 3d and 7th ar-
 “ ticles, as too general; and as to the 8th article, appoint the same to
 “ be put, so far as it concerns letters from Lady Jane or Sir John,
 “ which were wrote upon the same kind of paper, or sealed with the
 “ same seal of that of La Marre’s; and also, any letters or writings
 “ prior to the commencement of this process, mentioning or giving to
 “ understand, that Sir John had devised letters, as from Pierre La
 “ Marre, or had given directions for devising such letters, or knew of
 “ any such letters having been devised.”

Mr. Brown was accordingly examined for the sixth time, and in the course of these different examinations, exhibition was made by him of all papers, or excerpts from them, relating to dates, places, children, suspicions, money-transactions, and every other circumstance, which the invention of the pursuers could suggest as any way connected with the cause.—The defender did not think it necessary to produce the whole of these letters entire, because many of them concerned indifferent matters, or third parties, which could only tend to load the cause, without being of the least use to either party; but even these were put into the hands of one of the clerks of court, in consequence of an appointment in the following words: “ Appoint Mr. Charles ^{Purf. pr. 424.}
 “ Brown, doer for the defender, to give inspection to Robert Leith, ^{June 25th;}
 “ depute-clerk of session, of the whole letters referred to in the said ^{1766.}
 “ petition, whereof excerpts or copies were produced, that he may
 “ compare the same, and see that the same are fully and fairly taken;
 “ with power to him to take such further excerpts as may seem to him
 “ to relate to this question.” Accordingly these letters were examined by Mr. Leith, who made a report* concerning them; so that the pursuers have, in one way or other, had access to every paper or writing found in the repositories of Sir John Stewart and Lady Jane, or places where they lived, which could throw the least light on the matters at issue.

The next presumption is, the general opinion, or *habite and repute*, <sup>3. HABITE AND RE-
PUTE.</sup> of all who had best access to know any thing of Lady Jane or Sir John, or of their transactions at the time; and he may say of the world in general, a few persons in Scotland only excepted, who had an interest to raise a contrary report, or believe it, when raised.

That he was generally believed, or *habite and repute* to be the lawful son of Sir John Stewart and Lady Jane Douglas, was proved in the
 4 L service

* See the report, page 12th of the appendix.

service by Mr. Hepburn, Joseph Douglas of Edrington, Walter Colvill, and sundry other witnesses; and no contrary proof was offered.

That in France, where he was born, and in Germany, where his mother became pregnant, the same habite and repute did universally take place, and that a doubt of the birth never was entertained in these countries, either by French, by Germans, by English, or by Scots, who had occasion to know any thing of Lady Jane Douglas, is fully established by a variety of unexceptionable witnesses, examined on both sides, in the course of this action.

Lord Cathcart, General Maclean, Lieutenant Mackenzie, Madame Mailfer, Mr. Mailfer, Mr. Andrieux, Madame Mayette, Baron MacElligot, Mr. Hepburn of Keith, Mr. Gordon of Coubairey, Mr. Byres of Tonley, Mr. Fullarton of Dudwick, Miss Primrose, Dr. Brisbane, Mr. Graham of Garvock, Chevalier Douglas, Madame Tewis, Abbé Tewis, George Leslie, and a great many others, have concurred in this fact, that the birth was universally believed abroad, and that they never heard any contrary report, till insinuations of that kind came from this country.

Purs. pr. 84,
D.

Lord Cathcart depones, " That he was at Spa and Aix-la-Chapelle during the period specified (i. e. in the year 1748) and there heard a good deal of conversation amongst Lady Jane's acquaintances, both British and foreign, upon the subject of her having been lately brought-to-bed of twins; that he afterwards passed the ensuing year at Paris, and that he never heard, in any of these places, the smallest surmise of the imposture or falsehood mentioned in the question; that he remembers afterwards to have seen Lady Jane presented at London to the royal family, and received there with the respect due to her birth, by persons of the first distinction, although at that time it was no secret that the above suspicions had been raised against her, but cannot say he ever met with any person, till after her death, either in England, Scotland, or elsewhere, who mentioned those suspicions to him, as knowing or believing them to be founded."

397, F. Mr. Hepburn of Keith depones, " That while he remained in France, so far as he remembers, he never heard any person doubt of the defender or his twin-brother's being Lady Jane Douglas's children; that he cannot be positive as to the time he left France, but believes it may have been some time in the 1749, or 1750.

Serv. p 9, E. Mrs. Hepburn of Keith depones, " That she never heard, as far as she remembers, any doubt about the forementioned sons being Lady Jane's, till she came to Scotland in the year 1749.

Def. pr. 350, E. General MacElligot depones, " That he never doubted, as sure as God is in heaven, but that it (i. e. the defender) was Lady Jane's child; and that, while he staid at Reims, he never heard any one doubt in the least of its being Lady Jane's child."

Lieutenant

Lieutenant Mackenzie depones, " That he never heard any person ^{Def. pr. 54,}
 " at Reims express any doubt or suspicion that Lady Jane had not been ^{A.}
 " delivered of twins at Paris; and that the deponent had not the least
 " doubt thereof himself."

General Maclean depones, " That Lady Jane and Sir John always ^{364, C.}
 " showed the most parental care and affection for their son, and that
 " he, the deponent, firmly believed him to be Lady Jane's child; nor
 " did he ever hear, while he was at Reims, any person make the least
 " doubt of the child's being Lady Jane's."

James Gordon of Coubairdie depones, " That some time before the ^{375, E.}
 " breaking up of the congress at Aix-la-Chapelle, the deponent waited
 " on the late Lady Wigton, when the conversation turned chiefly on
 " Lady Jane Douglas and her pregnancy, which gave very great delight
 " to every body, as giving an heir to the Douglas family; and nobody
 " doubted of her being pregnant; and it was always the topick of con-
 " versation wherever there were Scots people present, who were very
 " happy that the Douglas family was to be represented; and even the
 " French, with whom the deponent kept company, were in raptures,
 " that the family of Douglas was like to be continued, by the issue of
 " an immediate daughter of the family.—Depones, that he never in ^{376, C.}
 " his life heard it doubted, while he was in France, that the twins of
 " which Lady Jane was deliverd, were her's."

Mrs. Gordon of Coubairdie depones, " That she heard that Sir ^{376, A.}
 " John and Lady Jane, when they left Reims, were going to Paris,
 " and she afterwards heard that Lady Jane was delivered of twins
 " there. Depones (while she staid in France) she never heard the
 " least doubt that Lady Jane was brought-to-bed of twins, or that
 " Archibald and Sholto were her's."

Patrick Byres of Tonley depones, That he resided in the French ter- ^{378, G.}
 " ritories till March 1749, and, till he came to Britain, he never heard
 " a doubt made of Lady Jane Douglas's having been with child, or of
 " the child or children that she had produced, being her's."

John Fullarton of Dudwick depones, " Every body he heard talk of ^{381, C.}
 " the subject were firmly convinced that Lady Jane had been brought-
 " to-bed of twins; he never heard the least doubt of it in France, nor
 " any where else, till he came to Scotland."

Mr. Graham of Garvock depones, " That while he was in France, ^{362, E.}
 " he never heard any person hint that the defender and his twin-
 " brother were not her (Lady Jane's) children.—Depones he was in ^{363, B.}
 " France two years, or thereby, before he saw Lady Jane (at Liege in
 " in summer 1748) and remained in France three years thereafter, or
 " thereabout."

Dr.

- Def. pr. 383, C. Dr. Brisbane depones, " That he, the deponent, was in Paris in summer 1748, and did then hear that Lady Jane Douglas had been delivered of twins, being two boys; and never did hear any person make the least doubt of the truth thereof, either at that time, or while he, the deponent, remained in France."
- 163, C. Sir William Stewart depones, " That in the 1748 there were a good many British at Paris, particularly several Scots, with severals of whom he conversed at that time, about Lady Jane's delivery, and never heard any of them doubt of it."
- 392, D. Lady Ardschiell depones, " That while she was in Paris in the 1749, she never heard any person hint or doubt as if the twins which Lady Jane was said to be delivered of, were not her own children."
- 504, E. Chevalier Douglas depones, " That he never heard of the suppositiousness of the children of Lady Jane, till after Lady Jane and the Colonel had left Dunkirk, where he saw them, (in December 1749.) That it was a Scots lady, since dead, married to a Colonel, in the service of the King of France, who spread this report at Dunkirk, as he has heard; and he remembers himself to have heard this lady say, that the children of Lady Jane were not her own, and he believes it was in the year 1750; that he does not incline to tell the name of this lady, from delicacy, since she is dead."
- Purs. pr. 355, H. Mr. George Leslie, depones " That about a year after the first time that he saw Lady Jane and the Colonel at Reims, he saw them a second time at Reims with one of their sons; and that the deponent never heard the legitimacy of the child called in question at that place by any person, or at any other time or place in France, till some papers were published in Paris for the Duke of Hamilton, in relation to the subject matter of this process."
- 808, B. James Johnston depones, " That he never heard it doubted or suspected that the children of Lady Jane Douglas were not her own children, until the time of this process, and that none of the persons whom the deponent was acquainted with appeared to him to doubt of it, particularly my Lady Wigton, Baron MacElligot her husband, and Lord Blantyre, whom the deponent saw very often."
- Def. pr. 524, B. Mr. Andrieux depones, " That he did not hear any person say before the present process, that they suspected these two children were not Mr. and Madam Stewart's."
- 607, C. Monsieur Mailfer depones, " That he never heard at Reims, that any body had doubt of the legitimacy of Mr. and Madam Stewart's children."
- 603 F. Madame Mailfer depones, " That she never had any doubt, nor knew any body who had doubts of these children being Mr. and Madam Stewart's."

Mr. Macnamara, as far back as the 1756, had been wrote to about ^{Purf. pr. 804, D.} this matter by Sir James Stewart, and in his answer, dated Reims 30th July that year, he writes, "Here no person ever had the least suspicion or imagination that the child was not theirs. It is not credible, that Mr. and Madam Stewart could have had so much tenderness, and been at so great expence, about an unknown child."

Madame Blainville depones, "That when the deponent went into ^{Purf. pr. 871, A.} the room, in Michelle's house, where she saw the child for the first time, the deponent believed, that the child belonged to the lady, but that she was much more convinced of it, when she saw the emotions of tenderness of the lady towards the child, which she has above described; and that then the deponent could have sworn, according to her opinion, that the lady was the mother of that child."

The pursuers say, that the people abroad did not know her age, and had not the same complex view of circumstances which the people in this country had. This is a very extraordinary argument, when it is considered, that Lady Jane was daily in company with Lady Wigton, Lord Crawford, and others, who were well acquainted with her age, and knew every circumstance of her conduct, at the time, much better than any person in this country; and when it is also considered, that, even to this day, not a person abroad, who has been examined as a witness in this cause, though informed of those pretended *clear* proofs, which the pursuers have with so much labour accumulated, will give the least credit to the injurious report.

Madame Mayette depones, "That she never doubted nor heard any ^{Def. pr. 518, D.} body doubt that Madam Stewart was the mother of these two children; and the deponent believes really that this lady was the mother, because she showed a great deal of tenderness for them."

Nurse Mangin depones, "That she never her self thought, nor heard ^{—597, E.} tell, that Madam Stewart was suspected not to be the mother of the child which she the deponent nursed."

John Favre depones, "That he saw the lady (Lady Jane) who he ^{—591, A.} believes was the mother of the child, at the hotel d'Anjou, and at Dammartin; that she was very thin, that she was very pale, and had not the appearance of being well, as she was so pale."

Madame Michelle depones, "That Lady Jane showed a great deal of ^{Purf. pr. 853, G.} sensibility and tenderness for the child, at the time of sending away the first nurse, and that the deponent did then believe that she was the veritable mother of the child, and believes so still, and that she acted her part extraordinary, if she was not."

Madame Marie Therese Tewis depones, "That her mother (Ma- ^{Def. pr. 479, B.} dame Tewis) never doubted of the pregnancy or delivery of Lady

" Jane Douglas, because she was well informed, and had knowledge
 " of it."

Def. pr. 495,
 C.

Mr. François Antoine Tewis depones, " That Madame Tewis, the
 " deponent's mother, never told him that she had any doubt of the
 " pregnancy and delivery of Lady Jane Douglas, but, on the contrary,
 " she persisted always to say to the deponent, that she had no doubt of
 " the pregnancy or of the delivery."

Purf. pr. 573,
 H.

Lord Crawford, Lord Blantyre, Lady Wigton, and others, who
 were abroad at the time, and had occasion to be more particularly ac-
 quainted with the circumstances of the pregnancy and birth, than
 any person in this country, appear to have entertained the most tho-
 rough belief that the children were Lady Jane's, even after they were
 fully apprised of the contrary reports in this country. There is a let-
 ter in process from Patrick Lindsay to the Earl of Crawford, dated at Edin-
 burgh, 27th August 1748, in which Mr. Lindsay says, " Some people

Serv. p. 50,
 E.

" here are so ill-natured as to think her extraordinary (i. e. Lady Jane's)
 " good fortune an impossibility." Lord Crawford never gave the least
 credit to such insinuations. Your Lordships have his letter in the service
 to Lady Jane, in June 1749, in these words, " I have used all the ar-
 " guments I could with decency urge, that they (Lady Jane's relations)
 " should, were it no more than compassionate the two poor dear chil-
 " dren, representing to them the great expence they must put you
 " to, and how unnatural it was for them to abandon you both.—

51, B.

" Pray make my most kind compliments to Colonel Stewart, I shall
 " write to him soon; however, I hope he will not defer letting me
 " know how your Ladyship and my two dear young friends do, hea-
 " vens preserve them both for a blessing to you, as well as to all their
 " relations."

Purf. pr. 364,
 D.

Lady Blantyre depones, " That she has heard him (Lord Blantyre,
 " her son) say, that he never heard any body doubt that these chil-
 " dren were hers (Lady Jane's) till he came to Britain, that he himself
 " seemed to be convinced that they were her children, and often de-
 " clared he had no doubt of it."

—G.

Mr. Alexander Stewart depones, " That he has heard his said brother
 " (Lord Blantyre) frequently say, that he had never heard any bo-
 " dy doubt that the defender and his brother were really Lady
 " Jane's children till he came to Britain; that he himself had no
 " doubt of it."

Def. pr. 400,
 A.

Mrs. Skene depones, " That she remembers to have heard Mrs.
 " Kennedy, widow of the late Baron Kennedy, ask the late Lord
 " Blantyre, in presence of his mother, whether his Lordship really be-
 " lieved, that the defender and his twin-brother were really Lady Jane
 " Douglas's? To which my Lord answered, he believed it as much as
 " he believed he was Lady Blantyre's."

In a letter to Lady Jane Douglas, Paris 29th December 1748, his Lordship writes, "God bless the young heroes."——In another letter to her, dated Paris 21st January, he writes, "I hope the two young heroes are well."——And in another to her, dated Edinburgh 12th November, "I think indeed, that it would be proper

"to advise with your friends and relations about your Ladyship's affairs, for it certainly will be impossible for your Ladyship, and your young family, to remain abroad, if your brother, the Duke, persists in his resolution of not remitting any money.—My warmest wishes attend your Ladyship, and my young godson."

Isobel Walker depones, "That whilst the deponent was abroad, she never heard any surmise of Lady Jane's not having been with child; that that was never doubted by any who saw her in the country where she was, and that these surmises took their rise in Scotland, which the deponent heard of some time before she came to England. In this cause, depones, That she, the deponent, never had the least suspicion that Lady Jane was not delivered of the defender and his twin-brother, nor does she know or think, that Effy Caw ever had any such suspicion."—A variety of other evidence, with regard to Effy Caw's conversations, has already been stated, under the head of the pregnancy.

Lady Wigton depones, "That it was generally believed among Lady Jane's acquaintances at Aix-la-Chapelle, that she was then with child, and the deponent never heard that any of them doubted of it."

And, she depones, to her standing god-mother in 1751, at the baptism of Sholto, in England. In a letter to Lady Jane, about that time, dated Wednesday, she writes, "My compliments to Madam

"Hewit, and my blessing to my god-sons." And in another letter, dated February 17th, to Lady Jane, "I truly long to see you, and also my two god-sons, I pray God bless them and keep them to you,—my blessing to the children, and services to Madam Hewit."

Lady Wigton was by that time fully apprised of the injurious story raised in this country, as appears from the oath of Miss Primrose, to be presently noticed; yet it is plain, from her behaviour and her letters, that she did not pay the least regard to it, nor entertained the least doubt of the truth of the birth.

Mrs. Greig depones, "That Lady Jane's pregnancy was always the subject of conversation amongst them, and that she never heard any body doubt of it while she was abroad, nor never heard it called in question till the deponent came to Scotland, nor the truth of it doubted.—Examined as a witness in this cause, she depones, That she never heard any person doubt of the two childrens being Lady Jane's own children till she came to Scotland, and that she has no more

" more doubt of Lady Jane's being the mother of the two children, than she has of any woman's being the mother of a child whom she saw born."

So strong appears to have been this witness's persuasion of the truth of the birth, that she says the child had not the least resemblance to a French child.

Def. pr. 357, G.

358, C.

359, F.

361, E.

Miss Primrose depones, "The deponent heard Lady Jane's pregnancy often spoken of by Mrs. Tewis, in whose house Lady Jane had lodged when at Aix-la-Chapelle, before the deponent's arrival there; and by Mrs. Greig, then Lady Wigton's waiting-woman, and by Lady Jane Douglas's servants. Depones, that all these persons seemed to believe, that Lady Jane was with child, and that while the deponent was at Aix-la-Chapelle, she never heard any person express any doubt of it.—That about the same time, the deponent heard of Lady Jane's delivery as aforesaid, from the above mentioned Mrs. Tewis, Madame d'Obin, and others of Lady Jane's acquaintance at Aix-la-Chapelle, whose names this deponent does not now remember; and the deponent did not hear any of them express the least doubt of the fact of Lady Jane's delivery.—That during the whole time of the deponent's residence at Reims, the deponent never heard any person express the least doubt, that the said twin-children were Lady Jane's.—Depones, that the first time she heard of the suspicions, that the defender and Sholto were not the children of Lady Jane Douglas, was at Blois, after she and Lady Wigton had gone there from Paris, when she was informed by Lady Wigton, that she had then received a letter from Scotland, mentioning, that Lady Jane was suspected there, of having imposed the said twins on the family of Douglas."

If Lady Jane was guilty of an imposture, it is an astonishing circumstance, that it should not have been smelt out, or in the least suspected, by any one of her female acquaintance, who had occasion to see and be conversant with her in the very scene of action, but that, on the contrary, they should all and each of them have persisted to the last, in asserting the truth of the birth, notwithstanding the suspicions which were afterwards endeavoured to be instilled into them.

Nay, even in this country, the contrary report gained credit only with a few, who, from personal interest or connection, were easily persuaded to believe an assertion, which, in the nature of things, could not, at the time it was raised, have any other foundation, than the malice of Lady Jane's enemies; or, perhaps, an opinion, that by reason of her age, she could not have children. The Duke of Queensberry, Lord Morton, Mr. Haldane, and other witnesses appealed to on this head by the pursuers, make very little in their favour. They talk in general of reports having been raised in this country against the truth of the birth; but they do not say that these reports were either well-

well-founded, or met with general belief. Mr. Haldane says, "He has ^{Purf. pr. 302, E.} heard this question several times tossed among the ladies, who were generally divided in opinion; but that the deponent's own opinion was according to the accounts he received by the foresaid letters," (*i. e.* the letters he received from Lady Jane.)—Mrs. Ramsay, a witness adduced in order to prove that Sir George Stewart, the brother of Sir John, did not believe in the birth, depones, "That the deponent came to the deceased Sir George Stewart of Grandtully's family in the year 1754, and remained till Sir George's death in 1759; and the deponent has heard Sir George say, that he did not believe that the children were Lady Jane's and his brother's: that Sir George did not talk of this subject often, as he did not like to speak of his brother's name, with whom he was not in friendship then, or, as the deponent understood, for a good many years before the birth of the children; and the deponent believes, that Sir George knew no more of the matter with respect to the birth of the children, than she did. Upon the defender's interrogatory, depones, That she heard no other reason given by those who said the children were not Lady Jane's, but that Lady Jane was rather old."—Mrs. Cockburn, examined for the same purpose, depones, "That Lady Grandtully, in an overly conversation, signified, that she thought it extraordinary that Lady Jane Douglas had children at such an age; but thinks that Sir George was not present at that conversation, but cannot say positively whether he was or was not. Depones, that she has heard it said by some, before this process, that these children were not Lady Jane's, and by others, that they were, and that one of them, in particular, was very like her. And depones, that the deponent herself makes no doubt that they are Lady Jane's children."

302, L.

303, G.

It is in proof, that the story raised in this country; by designing people, was founded partly on absolute falsehoods, and partly on an erroneous conjecture, taken from Lady Jane's age. The falsehoods were: 1mo, The supposed letter from the Count Douglas to the Duke of Douglas. 2do, The letter from a gentleman concerning Lady Stair's inspection of the teeth.—And, 3tio, The story of Margaret Kerr.—Your Lordships will judge what weight is due to a report, founded on three such notable circumstances. Had Margaret Kerr been dead, the story laid in her name would have passed for gospel with the pursuers; but luckily she is alive; and having been adduced by the pursuers, in order to have the fact established by her oath, your Lordships will observe in what manner she establishes it.—Depones, that when she heard the particulars of Lady Jane's delivery, she did believe them to be true; "and the reason of her belief was, that as she did not doubt of her being married, *neither did she*

47, C.

Purf. pr. 46, I. "doubt in the least of her having children." In another part of her oath she says, "That she heard it reported that Major Cochran, now Lord Dundonald, had wrote a letter to the Duke of Douglas, where- in it was said the children were supposed not to be Lady Jane's; that this was *the only report* she ever heard that the children were supposititious."

306, B, L. Mr. Hamilton of Overtown, after having deposed, that he had heard the Duke of Douglas say, he did not believe the children to be Lady Jane's, and that he was induced to be of that opinion by those whom he took to be his friends, "being interrogated for the defender, if the Duke mentioned to the deponent the persons whom his Grace said were his friends, and made him believe that the children were not Lady Jane's? depones, That the only person whom the deponent remembers to hear his Grace speak of as one of those friends, was Major Cochran, now Earl of Dundonald: That the Duke showed the deponent, repeated times, a letter which was signed *Thomas Cochran*, and which his Grace said was from Major Cochran, and an original letter, which the deponent frequently read by himself, and by that means comes to remember the import of the letter; which, to the best of his remembrance was as follows, &c." The tenor of it is above recited, p. 18.

317, D. John Anderson, writer in Douglas, depones, "That some years before the 1755, the deponent heard a report in this town, that a letter from one Douglas, who was called a Count, said to have come from Holland, addressed to the Duke, and in the French language, came to his Grace; and that this letter, as the deponent heard, was sent by Stockbrigs to his son, then at the university of Glasgow, in order to be interpreted; and that the account which was reported of this letter, was something concerning his sister Lady Jane, and the writer of the letter his own relation to the family. And being interrogate, what people in general, and particularly his Grace the Duke of Douglas, said concerning Lady Jane's children, after the report of their birth came to Scotland? and what was the Duke of Douglas's persuasion concerning these children, till near the time of his death? depones, "That, in the year 1748, when news came to this country that Lady Jane was delivered of two boys, the deponent, at that time, had no opportunity to get access to the Duke, as not being well with Stockbrigs, so cannot declare any thing of the Duke's opinion at that time; but then heard several people declare their opinion that Lady Jane was the mother of these children, and also several people declare, that she was not: That some time after

“ after that, the deponent has heard that the Earl of Crawford and
 “ Lord Blantyre had brought accounts from abroad, that Lady Jane
 “ was the mother of these children, which at that time confirmed
 “ several in the opinion of the affirmative: That after Stock-
 “ brigs’s death, in the 1755, the deponent had frequently access to
 “ see and converse with the Duke of Douglas, when he has heard his
 “ Grace make use of abusive language towards his sister and her hus-
 “ band; and to say, that she had never born these children; and, if
 “ the deponent remembers right, that he used to call them Pretenders.
 “ —Being interrogate for the defender, depones, That he heard the ^{Parf. pr. L.}
 “ Duke say, after Stockbrigs’s death, that there were letters found in
 “ Stockbrigs’s room, after his death, addressed to the Duke, which his
 “ Grace said had never been delivered to him; and it was the com-
 “ mon rumour of the country, that, for some time before Stockbrigs’s
 “ death, several visitors were refused access to the Duke, unless
 “ they were agreeable to him (Stockbrigs); and that it was even re-
 “ moured in this place, that Stockbrigs was the cause of the Duke’s
 “ seeing his sister, when she came to visit him with the two children,
 “ which was in the year 1753, as the deponent remembers, and that
 “ in particular, he heard from William Howieson, writer in Douglas,
 “ and the deceased William Greenshiels, the Duke’s servant, who both
 “ declared to the deponent, that they heard the Duke say so to them,
 “ some time after Stockbrigs’s death. And being interrogated, whe-
 “ ther he saw Lady Jane when she came to pay the foresaid visit to
 “ her brother, and her children, and if he observed any resemblance in
 “ any of them to her ladyship? depones, That when Lady Jane Dou-
 “ glas came to this town from the castle, after being refused access
 “ to her brother, she sent to the deponent, who waited on her, and
 “ conversed with her more than an hour, and she was then in a very
 “ melancholy distressed condition: That before he waited on her lady-
 “ ship, he had access to see the two children below stairs, and had
 “ them both on his knee; and afterwards, in his conversation with
 “ Lady Jane, the deponent told her, that he thought Sholto had a very
 “ great resemblance of her ladyship.—And being interrogate, if he
 “ heard any reason assigned by those whose opinion it was that the
 “ children were not Lady Jane’s? depones, that the ordinary cause af-
 “ signed by people of that opinion, was, that Lady Jane was too old
 “ to have children; and her going abroad to a Roman catholick coun-
 “ try to bring them forth, gave occasion of suspicion.”

— 11.

William Howison, writer in Douglas, depones, “ That the Duke of ^{Parf. pr. 320,}
 “ Douglas lived for many years retired in Douglas-castle: That Stock- ^{E.}
 “ brigs lived with his Grace for many years, and was his chief ad-
 “ viser; and that it was often difficult to get access to the Duke but
 “ by

“ by Stockbrigs’s means. Depones, that he heard the Duke of Dou-
 “ glas blame Stockbrigs after his death, that he, Stockbrigs, was in the
 “ practice of intercepting his Grace’s letters, and keeping them up
 “ from him: that the deponent did not hear of any letter particular-
 “ ly condescended on, but one that was wrote by Lord Haining, one
 “ of his Grace’s commissioners, complaining of the heavy charge
 “ which Stockbrigs made in his accounts for entertainments at the
 “ time of the sittings of the General Assembly; which letter, it was
 “ said, Stockbrigs kept up from his Grace; and that it was after
 “ Stockbrigs’s death that the deponent heard this also. Depones, that
 “ he has heard Stockbrigs say, that the defender and his twin-brother
 “ were not Lady Jane’s children; but the deponent never was present
 “ at his saying so in presence of the Duke, but was told by William
 “ Greenshiels that he heard Stockbrigs say so to the Duke. Depones,
 “ that he remembers Lady Jane and her children coming to Douglas
 “ with a view to see her brother; and, as the deponent thinks, this
 “ happened in the year 1753: that Lady Jane was refused access
 “ to the Duke, and it was then reported that it was owing to Stock-
 “ brigs that his Grace would not see her: and, after Stockbrigs’s death,
 “ the deponent was informed so by his Grace himself: that this hap-
 “ pened in a conversation which his Grace had with the deponent, in
 “ which he mentioned the money that Stockbrigs had wronged him
 “ of; and then added, that the worst thing he had ever done him in
 “ his life, was preventing his seeing Lady Jane his sister, when she
 Parl. pr. 321, I. “ came to his gate.”—This witness also depones, that he has
 frequently been told by William Greenshiels, the Duke’s ser-
 vant, now deceased, “ That he, Greenshiels, heard the Duke, at two
 “ different times in his last ailment, reflect grievously on himself for
 “ the bad treatment he had given to his sister Lady Jane, and pray-
 “ ed to God that he might be forgiven for it; and that the persons
 “ who had been the cruel instruments might be forgiven.”
 Parl. pr. 372, G. Mr. Douglas of Edrington, being interrogated, if he heard that
 the story of Lady Jane’s children being supposititious, “ Was raised by
 “ the agents and friends of the family of Hamilton, particularly Mr.
 “ Archibald Stuart, and Major Cochran, now Earl of Dundonald,
 “ in order to procure settlements by the Duke of Douglas in favour
 “ of the family of Hamilton? depones, he has heard that story was
 “ propagated by the agents and friends of the family of Hamilton,
 “ and particularly Archibald Stuart and the now Earl of Dundonald,
 “ and the now deceased Sir William Douglas of Glenbervie; with the
 “ last of whom the deponent had a very warm dispute on that sub-
 — I. “ ject.—Being interrogate if ever he heard that they gave any reason
 “ for

“ for this story, or that they mentioned any ground or foundation
 “ they had for such an assertion? depones, he believes it is probable,
 “ that, in the dispute betwixt the deponent and Sir William Douglas,
 “ he, Sir William, might give some pretended reasons, which then the
 “ deponent thought of so little consequence, that he cannot now re-
 “ member them. Being interrogate, if or not this story was contra-
 “ dicted and discredited by almost every person not connected with
 “ the family of Hamilton or their agents; and if it was not con-
 “ tradicted and discredited by the deponent himself? depones, he
 “ heard that story contradicted and discredited by most persons
 “ whom he conversed with on the subject; and as for the deponent Purs. pr. 373,
 “ himself, he always contradicted and discredited it — Being interro- E.
 “ gated if, after Stockbrigs’s death, he did ever hear the Duke reflect
 “ on Stockbrigs for hindering him to see Lady Jane, when she went
 “ with her children to Douglas-castle in the year 1753, depones, he
 “ has heard the Duke several times, and particularly when he lived in
 “ Queensberry-house, in the Canongate, where the deponent was dai-
 “ ly with his Grace while he, the deponent, was in town, (which was
 “ upwards of five weeks) reflect on Stockbrigs and others, for depriv-
 “ ing him of the pleasure of seeing his dear sister *Janie*, (which was
 “ the usual name he gave Lady Jane) and her bairns, when they
 “ came to Douglas-castle to see him, since now he could never have
 “ that happiness. And further depones, that Mr. Greenshiels, now
 “ deceased, who was master-household to the Duke of Douglas, told the
 “ deponent, when conversing together in Queensberry-house on that
 “ subject, how the Duke and he, Mr. Greenshiels, were, by the influ-
 “ ence of Stockbrigs, locked up in a room together, while Lady Jane
 “ and her children were at Douglas-castle, so as they could have no
 “ access to see them, or receive a message from them; and that he
 “ has heard the Duke tell the same thing frequently in a great passion.”

Mr. Hamilton, the minister of Douglas, assigns Lady Jane’s age as the Purs. pr. 322,
 reason of the Duke’s disbelief. The memorialist declines entering fur- C.
 ther into this witness’s evidence. He was once the adviser, the friend,
 the comforter of Lady Jane Douglas, and it would be doing injustice to
 his reverend character to suspect, that any share which the Dutches
 of Douglas may be supposed to have had, in the revocation of the an-
 nuity once settled upon him by the Duke, could have the least in-
 fluence upon his deposition, or byass him in any degree against the
 son of Lady Jane Douglas.

The argument founded on Lady Jane’s age has already been obvia-
 ted; and thus the whole grounds, on which the report was raised of
 her children being supposititious, being entirely removed, the report
 itself must necessarily fall to the ground. The affair of Lady Kin-
 naird,

naird, which had happened in 1747, might perhaps, from a connexion of ideas, contribute to make some people entertain suspicions of Lady Jane; but it ought rather to have been an argument in her favour; for, if Lady Jane knew of the attempt made by Lady Kinnaird, she must at the same time have known that it proved unsuccessful.

Purf. pr. 29^o,
K. The pursuers endeavoured to draw back the report to a very early period, and they laid hold of a passage in Walter Colvill's oath, where he says, that, within three or four weeks after he first received accounts of the birth, he heard it also reported, that the children were not Lady Jane's, and he wrote concerning these reports to Mrs. Hewit.—They do not seem to observe, that this fact, if true, makes directly against them; for, as it will not be pretended, that any enquiry had been made in France concerning the reality of the birth, or that any person abroad entertained the least doubt with regard to it, the necessary consequence is, that the report, thus propagated in Scotland, must have been founded on nothing which could give the least handle or pretence to it.—Had any suspicions been entertained abroad, or letters wrote over to this country, signifying a doubt concerning Lady Jane's conduct, this might have furnished a plausible reason for giving out, in Scotland, that the birth was doubtful or suspicious; and a belief, founded on such report, might have been prejudicial to the defender, in so far as to deprive him of one presumption in his favour: but a malicious story, raised by interested persons, before they could have the least ground for suspicion, can never be considered as the smallest exception from the general habite and repute.

4. ACQUIESCENCE OF FAMILY.

Another circumstance in favour of the defender, is the acquiescence of all his relations, who had an interest to have disputed his birth.—It will be observed, that the estate of Grandtully being under a strict entail, the defender, if supposititious, was assumed by his father, to the prejudice of all the heirs of entail on that estate, failing only one person, viz. Sir John's son of the first marriage.—It is clear, therefore, that these heirs of entail had an immediate right, as well as a manifest interest, to have disputed the reality of the birth; and Sir George Stewart, then in possession of the estate, had likewise an interest to enquire into it, in order that he might not be limited in favour of more heirs than really existed; these persons, however, acquiesced in the defender's being the son of Sir John Stewart, and acknowledged him as such.

In like manner, the Duke of Douglas, the only other person existing who had a title to challenge the birth, though he was at first prevailed on to give ear to the injurious suspicions which had been raised of his
 sister,

sister, did at last become sensible, that these stories had been improperly founded, and, by a settlement executed, not long indeed before his death, but while his judgment and faculties were quite entire, did acknowledge the defender to be the son of his sister, by making him his heir, and naming persons to be his tutors and curators. — In these circumstances it is much to be doubted, if any of the parties in this cause have a title to call his birth in question; and indeed it is extremely hard that it should at all be challenged at such a distance of time. — The Duke of Douglas, as well as the heirs of entail in the estate of Grandtully, had a right to have entered an immediate challenge as soon as the birth was given out, because they had an interest to insist, that supposititious heirs should not have a chance of succeeding to their estates; and had they seriously imagined there was any foundation for the story of an imposture, they ought to have brought their challenge, and certainly would have brought it, when things were recent, in the same way as was done in the case of Kinnaird; but, if both the Duke of Douglas and the family of Grandtully acquiesced in the defender's being admitted as the real son of Sir John Stewart and Lady Jane Douglas, what other person has a title to complain? “De partu supposito foli accusant parentes, aut hi ad quos ea res pertineat, L 30, ff. de lege Cornel. de falsis.”

The Duke of Douglas acknowledged the defender to be the son of his sister, by appointing tutors to him, *nominatim* under that character; and how do the pursuers know, that he would not have done the same thing, though he had seen proofs to the contrary, fifty times stronger than those hitherto adduced.

The tutors of the Duke of Hamilton and Lord Douglas Hamilton have likewise, from the beginning, insisted, that they had a title to prosecute this action, not so much as heirs of the Duke of Douglas, for that is a point not yet ascertained, and which probably will never be ascertained in their favour, but upon this footing, that the memorialist or his descendants may, one day or other, have a chance of succeeding as nearest heirs to the family of Hamilton. This was a point strenuously urged by them in the debate upon the *competency*, and, if they are well founded in it, they are inexcusable for having delayed their action till this time of day, when material witnesses are dead, and when the memorialist has grown up to the age of manhood, and is now possessed of a great and illustrious inheritance under that character, which those very pursuers had it in their power to have challenged from the first moment of his birth.

Another legal presumption, and a very strong one, arises from the judgment already given for the defender, upon the verdict of a respectable jury, *in foro contradictorio*, after an examination of many witnesses, 5. VERDICT.
OF A JU-
RY.

ses, who were cross-interrogated by the council for those very pursuers. That this verdict must remain good in his favour, until set aside by incontestible evidence, the defender has already endeavoured to show; and it would be unnecessary to argue further on this head, were it not that some few observations will be necessary upon a decision which the pursuers have discovered since the pleading, and are to found on as applicable to the present question. The circumstances of the case, as they appear from the record, are as follow : *

Cafe of Black-
ader in 1733.

John Blackader, taylor in Edinburgh, raised, in a trustee's name, an adjudication of the estate of Tulliallan, proceeding on a charge against Blackader to enter heir to Sir John Blackader of Tulliallan, therein said to be his grandfather.—Compearance was made for colonel John Erskine, who, in 1699, had purchased the estate at a sale before the court of session, and who objected, that John Blackader was not the grandson of Sir John Blackader, but descended of a bastard.—The pursuer was allowed to prove his propinquity, and he adduced three witnesses, two of whom knew John, the pursuer, and likewise his father John Blackader, who had lived in the family of Murray of Polmaise, as his falconer.—The one swore, that John the falconer was habite and repute the son and heir of Sir John Blackader of Tulliallan, but that John, the pursuer, had an elder brother in life called Peter. The other witness swore, that John the falconer, who sometimes got the name of Sir John, was entertained and looked upon as a gentleman, though employed by the Earl of Mar and Polmaise to keep hawks for them.—A third witness, who had been adduced for him, knew nothing of his descent.

This process was deserted by the pursuer ; but he soon after took out a brieve directed to the sheriff of Edinburgh, before whom he adduced the two witnesses who had sworn to the above habite and repute, with regard to his father, and he likewise brought a very slender proof, by two women, that his elder brother had been seen in a popish chapel, and was therefore understood to be a papist. On this proof, which was conducted privately, in the time of vacation, and without opposition, he was served nearest protestant heir to Sir John Blackader of Tulliallan, his grandfather, and, upon that title, raised a process of reduction and improbation of all colonel Erskine's rights to the estate of Tulliallan.

Colonel Erskine repeated a reduction of the service, offering to prove that Blackader's father, the falconer, was not the son of Sir John, but

* The memorialist was not informed of this decision, till after the first part of the memorial had been printed, which is the reason that it is not noticed in the argument upon the onus probandi, and degree of proof necessary for reducing the service.

but a bastard of the family, or a son of one Patrick Blackader in Garterie, commonly called Long Patrick.—Both parties were allowed a proof, the one, to support his service, the other, to prove his reasons of reduction.

Blackader's witnesses deponed, that John, the falconer, was habite and repute the son and heir (some of them only said *the righteous heir*) of Sir John Blackader, and it appeared that he had sometimes got the name of Sir John in Polmaise's family, and was spoke of as a gentleman, though he amused himself with hawks. On the other hand, many witnesses, examined for Colonel Erskine, deposed, that the falconer was the son of long Patrick of Garterie, who died about 1660.—Some of them knew long Patrick, and his two sons living with him, viz. the falconer, and his brother James, afterwards a soldier in the castle of Stirling.—They knew also the falconer living in the families of Mar and Polmaise, as their servant, and that the Earl of Mar's servants, by way of joke, used to call him *Sir John*. A variety of writings were also produced to show, that the falconer was truly the son of long Patrick, though he had sometimes, in jest, got the appellation of *Sir John* particularly, 1mo, A history of the name of Blackader, compiled in 1691, and signed by Commissary Blackader of Dumblane, wherein it is said, that Sir John had two sons, James and Alexander, and a daughter, Agnes, who was married to one Keith, a baron in the north. 2do, Decreet of certification at Colonel Erskine's instance, in 1696, against Keith, the daughter's son, as heir of line of Sir John Blackader. 3tio, Bond of reversion granted in 1660, by O-liphant of Condie, obliging himself to re-dispose certain lands to Sir John, and Lady Christian Graham, his wife, in liferent, and to James, their eldest son, in fee; whom failing, to Alexander, their *other* lawful son; whom failing, to Agnes, their daughter; from which it plainly appeared, that he had no son called John. 4to, Bond granted in 1654, by Sir John Erskine of Balgownie to long Patrick, for 2300 merks, and, failing him, to his bairns, which blank is afterwards filled up with the name of *John Blackader*. Item, Receipt by Patrick in 1659, for the annualrents, and 900 merks of the principal. Item, Receipt dated in 1662, by *John Blackader, servant to Polmaise*, of the annualrent of 800 merks only resting of the 2300 merks contained in the bond granted to his father, besides other receipts of annualrent, downward from 1662 to 1676. Item, Affignation by John Blackader to a blank person in September 1676, of this bond. Item, Bond by Balgownie in May 1677, for 600 merks, to John Blackader, *servant to Polmaise*, and Margaret Cunninghame his wife, (the pursuer's mother) with the discharge thereof by Margaret, after her husband's death.

Some writings produced and founded on by Blackader were challenged as forged, and he refused to abide by them. One of his witnesses was convicted of perjury during the course of the process, and had his ear nailed to the pillory. He himself was accused of suborning witnesses in another process, and was imprisoned on that account. He appeared, in short, to be a man of infamous character; his proof of propinquity rested solely on a habite and repute, sworn to by a few witnesses, of his father's being the *righteous heir* of Tulliallan; whereas, it was clearly proved, that he was the son of long Patrick, and that the habite and repute, if true, was founded on the circumstance of his fellow-servants having sometimes called him Sir John, by way of jest.

Jan. 8, 1736. The court, of this date, pronounced the following interlocutor: "Having advised the state of the process, probation adduced, writs produced, with the foregoing debate, find the proof and documents in process more pregnant on the part of Colonel Erskine, the pursuer, for disproving the defender's propinquity to Sir John Blackader of Tulliallan, and for proving that the defender's father was not the son of the said Sir John Blackader, than the proof and documents on the part of the defender, for proving the defender's propinquity, viz. that his father was the son of Sir John Blackader of Tulliallan; and therefore reduce."

Such was the decision in the case of Tulliallan, and the pursuers, in the cause of Douglas, are to request a similar judgment from your Lordships.—But let us examine what resemblance there is between the two cases which should occasion a similarity in judgment.—The memorialist cannot discover any one circumstance in which they agree, except that in both cases the question has been concerning the reduction of a service.

The memorialist never pretended to argue that the verdict of an inquest was *probatio probata*, which could not be set aside by reduction; neither did he ever maintain, that the propinquity of an heir established upon a general proof of habite and repute might not be defeated by stronger contrary evidence. Instances happen every day of services being set aside by reduction, at the instance of the true heir or other party having interest, upon proof brought, that the evidence of propinquity taken before the inquest, was erroneous, especially where the service is to a remote predecessor. The claimant in the service generally rests upon the general proof of habite and repute, that his father was the son of such a person, and his grandfather the son of such another person, and so he connects his pedigree through different generations, upon this presumptive evidence arising from habite and repute. But if
another

another party appears in a reduction of the service, who brings evidence that the person served was descended of a bastard, or that there is any other defect in his pedigree, and that he himself is a nearer heir, your Lordships will no doubt listen to such evidence, and if more pregnant and satisfying than the general habite and repute which was brought in the service, you will decern in the reduction.

But, in every such case, the burden of proof lies on the pursuer, and from the case of Tulliallan it appears, that strong evidence is required to defeat even the slenderest and most general proof of propinquity in a service. The taylor, in that case, had no sort of presumption in his favour, other than that of having obtained a service, upon proof of habite and repute, as heir to his supposed predecessor. There was no question concerning his filiation, as the son of those parents who had always entertained him as such; he was acknowledged to be the son of the falconer, and the only question was, whether he had connected his pedigree with a remote predecessor?—With regard to this, some witnesses said, that his father was habite and repute the son of Sir John Blackader, and other more credible witnesses deposed expressly, that he was habite and repute, and had always lived as the son of long Patrick. The evidence of these last was corroborated by family writings and documents, which showed clearly, that he was the son of long Patrick, and that he could not be generally understood to be the son of Sir John, though he might sometimes have been called so in jest. There was therefore no *possessio status*, no acknowledgment or treatment of parents, no serious habite and repute, nor any other presumption whatever, to establish a connection between his father, and pretended grandfather. On the contrary, the whole of these presumptions turned the other way, his father had lived and died as the son of long Patrick, he was proved to be such by writings and witnesses, it did not appear, that Sir John Blackader had ever acknowledged John, the falconer, to be his son, or John, the taylor, his grandson, and in short, the single point before your Lordships was, whether a service, founded upon a general proof by one or two witnesses of a partial and erroneous habite and repute, not of *filiation*, but of *propinquity to a remote predecessor*, was to give way to a clear, strong, and positive proof of the contrary.

In the present case, the question is, whether the memorialist is, or is not, the son of those persons who have always treated him as such? He has every presumption of law and of favour on his side, and his service did further proceed, not on a general habite and repute, but on a direct proof of the fact, that he was the son of Sir John Stewart and Lady Jane Douglas. In such a case, he does, with confidence, maintain, that no proof can be of any avail against him, which does

not.

not with certainty demonstrate, that he is not the son of Lady Jane Douglas.

6. POSSESSIO STATUS.

It is further extremely clear, that the above circumstances place him in such a *possessio status*, that by the law of this, and of all countries, he is entitled to be maintained and protected in that state, unless, by proofs clearer than sun-shine, it can be demonstrated, that his birth is supposititious. The argument upon this head has been fully stated, and need not be resumed.—It has already been said, that the council for the pursuers in France, upon whose opinion the *Tournelle* action was raised, have in express terms admitted the force of this presumption, and it is upon a mere misinformation, or mistake in point of fact, that they argue against the effect of it in the present case. They say, that this *possessio status* must go back to the first moment of the birth, and that, if the beginning of it is cut off, the whole must fall to the ground; and upon the facts stated to them in the memorial, they consider it as a fixed point, that the memorialist had no *possessio status* from the beginning.—These facts, which were the grounds of the *Tournelle* action, the memorialist will have occasion to state and consider more fully in the sequel; at present it is only necessary to observe, that the capital circumstances laid down as established in that memorial are, that Lady Jane Douglas having come to Paris in the beginning of July, in the stage coach of Reims, under the pretence of being delivered, did, along with her husband and Mrs. Hewit, enter to the house of Michelle upon the 8th of that month, and from that time continued constantly there during their residence in Paris, excepting that a few days after their arrival they went to the country for a day or two, to bring a child which they had at nurse; that the day of their entry was fixed by the register kept for the police, containing an article of that date relative to Mr. Stewart and his family, under the disguised name of *Fluralt*, which there was reason to believe was wrote with his own hand; and that the child, when brought, had the appearance of being a good many weeks, and even *some months* old.—The inference from these facts was obvious; the entry of Lady Jane to the hotel d'Anjou, being fixed to the 8th July by *infallible records*, and even by Sir John Stewart's *hand-writing*, attended with the circumstance of a *disguise* in the name, and the child, when brought to that hotel upon the 9th or 10th of July, having the appearance of a child a good many weeks, or even *some months* old, this child must have been born before Lady Jane left Reims; Lady Jane's delivery on the 10th July was rendered impossible; and the memorialist, though produced as her child at Michelle's, could not in nature have any *possessio status* as such, during the first weeks or months of his birth.—

It

It was upon these facts, and upon this necessary inference arising from them, that the French council gave it as their opinion, that the *possessio status* was not available to the memorialist, because *the beginning of it was cut off*; and their argument was no doubt extremely conclusive, because it proceeded on a supposition, that by infallible registers, and undoubted facts, which were offered to be clearly instructed, Lady Jane Douglas's delivery of the memorialist was rendered impossible. As the whole of the facts, however, upon which this opinion was founded, are now given up, the opinion itself needs no refutation. The memorialist does contend, that he has the same degree of *possessio status* which any other person of the same age has, or can possibly have. It is true, that the whole witnesses, who were present at his birth, do not now exist, or cannot be found; but two of them were in life when this process began, and have deposed to the fact.—Other persons who saw him, not *weeks or months* after his birth, but within eight or ten days of it, did then, and still do, believe him to be the son of Lady Jane Douglas. He was baptized, and has been uniformly known as such since that time, and he has never been known in any other character, or possessed of any other state.—The grounds, therefore, stated in the memorial to the French council, being now given up, unless the pursuers can show upon some *new ground*, and upon some *new infallible proof*, that his *possessio status* does not go backward to the time of his birth; or, in other words, that he is a supposititious child, the presumption arising from the possession which he has, must stand good in his favour. Had the French council been apprised, that the pursuers had nothing else to combat this *possessio status*, but the parole evidence of an inn-keeper and his wife, deposing to an insufficient cause of knowledge, arising from certain blank articles in their household-book, or the depositions of a parcel of beggars, deposing to the *enlevements* of children, by persons unknown, they certainly would not have given an opinion, contrary to their uniform practice, that such proofs could be admitted, far less that they were relevant, if brought.

Another most remarkable circumstance in this case is the similitude of features, which, independent of any *possessio status*, or other presumption, is laid down by all lawyers as having a legal effect in a question of filiation. The striking resemblance between Sholto and Lady Jane is deposed to by numbers of witnesses. 7. RESEMBLANCE.

Doctor Eccles depones, "That the twin-child Sholto had a striking resemblance of his mother, Lady Jane."—Mrs. Hepburn of Keith says, Def. pr. 385, A.
 "That the youngest son, Sholto, was Lady Jane's very picture."—Miss Serv. p. 9, F.
 Primrose says, That Sholto had a very strong resemblance of Lady Jane, Def. pr. 360, E.

“ and was her picture in miniature.”—Madame Mailfer observed the resemblance, even during the short time that the child was at Reims.—

Def. pr. 603, After mentioning the journey in 1749, to bring the youngest child
E. from the nurse, she depones, “ That in fact they brought a child, who
“ appeared to the deponent, when she saw him the day after his ar-
“ rival, weak and delicate, fair and very white, resembling his mother
“ as much as one could observe at that age.”

Purf. pr. 377, The likeness is also proved by the Right Hon. Mr. Stewart-Mac-
E. kenzie, the Countess of Glasgow, Lord Lindores, Mrs. Maitland, Janet
Def. pr. 397, F. Andrew, Mrs. Macrabie, Miss Johnston, Mrs. Maclean, Mrs. Smith,
371, E. Mrs. Skene, Mr. Hope of Rankeillor, Mr. John Murray, Mrs. Rigg
386, C. of Morton, Lady Wigton, Chevalier Douglas, Mr. William Grindlay,
388, B. Mrs. Greig, and Mr. John Anderson.
400, B, &c.

It does not appear that the defender was observed to have any likeness to his mother, but many of the witnesses have remarked that he has a resemblance to the family of Grandtully. Mrs. Hepburn of
Purf. pr. 340, Keith says, “ She thinks the defender has a likeness to the present Sir
I. “ John Stewart, and that she said so to the late Sir John.”—Mr. David
Græme, the first time he ever saw the defender, and before he knew
who he was, discovered him from his resemblance to the present Sir

Def. pr. 410, John Stewart. Depones, “ that he is very well acquainted with Sir
E. “ John Stewart, now of Grandtully, having known him from his in-
“ fancy; that he thinks he never saw the defender, unless once several
“ years ago at a burial; that he there observed a young gentleman,
“ who, he thought, resembled John Stewart, now Sir John Stewart of
“ Grandtully, and upon asking who that gentleman was, at some per-
“ son who was by him, he was answered that it was Colonel Stewart’s
“ son, by which he understood him to be Colonel Stewart’s son with
“ Lady Jane Douglas.”

This likeness is further deposed to by Mrs. Smith, who says it was the common opinion that there was a likeness between the defender and
406, F. the late Sir John Stewart, “ and the deponent thought so herself; and
“ that the defender was shaped like Sir John.”—Doctor Eccles says,
385, F. “ He always thought the defender had a great likeness of the deceased
“ Sir John Stewart, his father; and depones that Sholto was not so
“ big and strong as the defender, Archibald, and was more delicate
“ and subject to childrens ailments than Archibald.” See also Lord
Lindores, and Mrs. Macrabie.

It very commonly happens, that twins have but little resemblance to each other; but if these children were supposititious, it is surely a most amazing circumstance, that one of them should have turned out to be the very picture of Lady Jane Douglas, and answering, in every respect, to the description they had given of him, before he was in
their

their possession, and that the other should have been known, by indifferent persons, to be the son of Sir John Stewart, by his shape and resemblance.

The last presumption, which the defender hopes he may be permitted to state in his favour, is the known character of Lady Jane Douglas, as well as of his father.

8. CHARACTER
OF PERSONS
CONCERNED.

The pursuers were indeed pleased, in their publications in France, to use a good deal of freedom in this article of character.—Sir John Stewart they described as *un homme sans ressource, un chevalier d'industrie*, &c. Mrs. Hewit as *une fille perverse*; and even Lady Jane as one that had thrown aside all regard to her sex, her name, and her family.

With regard to Sir John Stewart, his character has already been given; his circumstances were not, indeed, opulent, when he married Lady Jane Douglas; but, that he was a man of honour, and incapable of putting such a fraud upon the world, is proved by all his acquaintance; and they, at the same time, agree, that he was a man of that impetuosity of temper, that he could not have had steadiness to go through such a scene of distress, upon account of these children, if they had not been his own.

Def. pr. 338.
E. 340, H.

The character of Lady Jane Douglas stands high in the proof.—She is described by every person who knew her at home or abroad, as a lady of the most amiable accomplishments; distinguished for her probity, good sense, and every honourable and virtuous sentiment.

The pursuers accused her of hypocrisy, in denying her marriage to Lady Katharine Wemyss, and in applying for the loan of money from three different gentlemen, viz. Mr. Haldane, the right honourable Mr. Stewart-Mackenzie, and William Robertson, all under the same pretences.

The history of her conversation with Lady Katharine Wemyss has already been given. The letters to the three gentlemen above named are greatly misrepresented.—In the months of August and September 1747, she wrote two letters, one to Mr. Haldane, the other to Mr. Robertson, asking from the former the loan of 200 l. upon the security of her bond of provision, and, from the latter the sum of 150 l. on her personal security.—Mr. Haldane, who was already her creditor, declined advancing any more money, upon which, in the month of October, she wrote to Mr. Robertson, begging him to advance her 200 l. and in place of personal security, offering an assignation of her bond to that extent, and desiring him to consult with Mr. Haldane, in whose hands the bond was.—She, at the same time, wrote to Mr. Mackenzie, begging a loan of 200 l. or 100 l. on personal security.

All

All the witnesses at Reims have given her the character of a most agreeable and virtuous lady, and she appears to have been universally esteemed at that place.—Madame Mayette says, “That Madam Stewart was very respectable, and that she, the deponent, honoured and respected her very much.” Madame Mailfer depones, “That she presented Madam Stewart to the first company of this town, and that she was generally respected during all her stay.” Mr. Mailfer depones, “That Madam Stewart appeared to be of an agreeable and respectful character, and was such as it were to be wished all women were, that she had a noble appearance, which created respect, and sometimes had a melancholy look.”

Madame d’Obin bears testimony to her character at Aix-la-Chapelle, and says, she lived like a saint, and was universally respected and loved, and spoke ill of no body. The Countess of Bassevitz’s letters are a proof how much she was regarded at that place. In one of her letters to Lady Jane, of date 6th March 1751, she says, “What a desert Aix-la-Chapelle appeared to me for want of your company, I comforted myself the best way I could in conversing about you, with all who knew you, or who had heard of your merit and of your sufferings in your own country. I often visited Madame Tewis, to hear her repeat all that she knew concerning you. She is a very good woman, and is the more sincerely attached to you, that she believes you to be an intimate friend of her daughter, the Lady of Colonel Herbert. The evidence, which she says she is in condition to produce in support of your pregnancy, is more than sufficient to frustrate, whatever the blackest malice of your enemies might invent, to the prejudice of your dear twins, especially if she takes my advice, and delivers her testimony before a notary, in order to give it the force of an authentick deposition. I have seen your cousin my Lord Drumlanrig. I was told that he aspired to the succession of the Duke, your brother, but I can hardly believe it, the nobleness of his look bespeaks him incapable of so mean an office, as that of supplanting a rightful heir. I have likewise heard, that he was displeased at your marriage. I know nothing of the truth of this, as he never explained himself upon the subject in my presence; but this I can say, that I have heard him speak of you with all the respect that is due to your virtues. Madame Tewis would no doubt inform you, that the Chevalier Cunningham, an officer of Lord Drumlanrig’s regiment, applied to her, to be informed of some circumstances concerning you; perhaps he had been deceived himself by false reports, and wanted to have the matter cleared up, and his desire of knowing the truth seems to imply, that he has no design of doing you hurt. At any rate, he will gain nothing by acting either directly

“ directly or indirectly against you, for people who have access to
 “ know, have assured me, that the Duke of Douglas had as little in-
 “ clination to favour his cousin, as his sister, and that he intends to
 “ leave all that he can dispose of at his death, to a female cousin, of the
 “ same name with yourself, and who is married, if I am not mistaken,
 “ to the same Duke of Buccleuch, whose hand you formerly rejected. It is
 “ not of yesterday, my dearest lady, that I have been acquainted with
 “ the character of my Lord, your brother, in spite of the generosity
 “ with which you endeavoured to draw a veil over the harshness of
 “ his proceedings towards you. It is very unhappy, that you should
 “ be obliged to have recourse to justice against him, could not you,
 “ before coming to that extremity, endeavour to bring about an in-
 “ terview with him, and to awaken the impulse of natural affection
 “ in him by your presence; the force of blood is great on such occa-
 “ sions, and it often happens, that a lost brother, is found again in the
 “ arms of his sister.—Perhaps, in this way, you may so far at last
 “ succeed, as to make him listen to terms, notwithstanding what has
 “ passed between you. Your magnanimity would suffer nothing by
 “ it, because an advance of this sort, made to a brother, would be
 “ no more than a due homage paid to the union of your family, to
 “ the glory of the name which both of you bear, to the good of
 “ your children, and, of consequence, to your own self-love, directed
 “ by reason.”

Her character in Britain is sufficiently attested by the Countess of ^{Def. pr. 398,}
 Glasgow, the Countess of Eglinton, the Right Honourable Mr. ^{396.}
 Stewart-Mackenzie, Lord Lindores, Lady Mary Menzies, Mr. Hal- ^{Purs. pr. 377,}
 dane, and many others, who had the best opportunity of knowing ^F
 her. The private correspondence between her and Sir John is, indeed, ^{Def. pr. 371,}
 full evidence of her character; and every witness, who has been ^{E, 399, E.}
 examined on that head, has uniformly declared her incapable of the
 fraud which has been laid to her charge. Mr. Stewart-Mackenzie ^{Purs. pr. 377,}
 depones, “ That he never entertained a doubt of the said children ^F
 “ being Lady Jane’s, as she was a lady of too great honour and vir-
 “ tue, to be capable of imposing children upon the world as her’s,
 “ which were not really her own. Depones, that Lady Jane Stewart
 “ had the respect and esteem of all who were intimately acquainted
 “ with her, and particularly the deponent’s, to the highest degree.”
 Lord Lindores depones, “ That he never entertained the least doubt of ^{Def. pr. 371,}
 “ their being Lady Jane’s children, as she was a lady of too much ^{E.}
 “ honour and virtue, as to be capable, in his apprehension, of impos-
 “ ing children on the world as hers, that were not so, and was gene-
 “ rally respected and esteemed by all that knew her.

It is a common observation, that *nemo repente fit turpissimus*. It seldom happens, that a person of good education and character, becomes, all at once, depraved; yet, according to the system laid down by the pursuers, Sir John Stewart and Lady Jane Douglas have at once divested themselves of principle and of character, and plunged headlong into the abyss of guilt.

Nay, they have also been the means of involving others in such a scene of perjury, as has seldom occurred.—Mrs. Hewit appears from the proof to have maintained a good reputation, and yet it is clear, that she must not only have been accessory to the imposture, if there was one, but has since been guilty of the grossest perjury to support it. The same thing is to be observed of Isobel Walker, and even of Mrs. Hepburn of Keith, a lady of most unexceptionable character. Mrs. Greig has also been influenced to commit perjury; and it is plain, that a variety of other witnesses, particularly Mr. Hepburn of Keith, Madame Tewis, Miss Primrose, baron MacElligot, Abbé Hibert, Mr. Menager, nurse Garnier and her husband, nurse Mangin and Chevalier Douglas must have transgressed the truth; yet the pursuers have not pretended to say, that their characters are exceptionable.

PROOF ATTEMPTED BY THE PURSUERS.

The memorialist having thus given a view of the accumulated proofs in favour of his birth, and at the same time obviated every seeming objection, which the industry of the pursuers had raised up against the force and credibility of those proofs, it remains to consider what may be properly called the evidence attempted against him, and which he shall arrange under four general heads, corresponding to the capital facts insisted in by the pursuers.

Arrangement
of their
proof.

They maintain, 1mo, That Sir John Stewart and Lady Jane Douglas had certain reasons or motives for desiring to have children. 2do, That the account of the birth given by Sir John and Lady Jane is disproved in two material circumstances, viz. the time and place of delivery. 3tio, That two children were carried off from Paris, one in 1748, and the other in 1749, and that Sir John Stewart and Lady Jane Douglas appear to have been guilty of these enlevements. 4to, That their conduct was, in various particulars, attended with suspicion; from whence it must be inferred, that they were guilty of an imposture.

3. Reasons assigned for
committing
the imposture.

The pursuers were in the right to begin with assigning motives for the commission of so extraordinary a fraud. In certain crimes, a *corpus delicti* appears, and the intention is presumed, or held unnecessary to be enquired into; but, in the accusation of *partus suppositus*, where a proof by circumstances is undertaken for establishing the crime, one material link in the chain would be wanting if no motive appeared, because,

because, in every case where a crime is not certain, the presumption is for innocence; and, independent of this general presumption, it is most unnatural to suppose, that any man, without cause, would cheat his own family, and burden himself with the children of another.

In every case therefore of *partus suppositio*, the motive of committing it has been assigned, and clearly ascertained.—Interest or resentment have generally been the incitement to so dangerous a fraud. The present case is the first, where the accusers themselves have been at a loss what motive to fix on, or what reason to ascribe. In the pleading, great scope was given to fancy, and much ingenuity displayed in divining the motives which might have actuated Sir John Stewart and Lady Jane Douglas; but none of the council were so lucky as to hit on one single reason which had the least foundation in proof, or the least shadow of probability. The motives they were pleased to figure were, 1mo, That the children might be used, as the means of reconciliation with the Duke of Douglas. 2do, That they might be used as the means of procuring an addition to Lady Jane Douglas's annuity. 3tio, A supposed resentment at the next heirs. 4to, The prospect of administration of the Duke's estate at his death. 5to, The credit of having heirs to the Douglas family. Each of these shall be considered in their order.—And,

1mo, With regard to the supposed scheme of reconciliation, it was ^{1st motive} at least a very new method of attempting to regain the lost affections of a brother to commit a crime, which, if detected, must have brought the persons guilty of it to disgrace and punishment, and the accomplishment of which, if successful, was to be attended with no benefit, but the highest injury, to the person whose affections were to be gained. Lady Jane might have begun with trying some other method, more justifiable and more rational.—She was at that time not on the best terms with the Duke, but she enjoyed her pension without disturbance, and her brother and she were not at open variance. Her safest course was to try no new experiments. There was no occasion to disclose the marriage, had she not been obliged to it by the pregnancy. She knew his temper too well to believe that he would relish her being either married or with child, to a man of no fortune, though of a good family; her being with child therefore was so far from being a lucky incident in that view, that it appears plainly to have brought her into the disagreeable dilemma of being obliged to disclose that secret, which it was her interest and her intention to have kept for ever from the Duke. If her design was to assume a false pregnancy, as an engine of reconciliation with the Duke, or indeed if she assumed it from any other motive, she ought to have prepared him to it by degrees. She
ought

ought first to have informed him of the marriage, and, according to the effect which that intelligence produced on him, she might have had recourse or not to the desperate enterprize of feigning a pregnancy. Besides, if the original motive of assuming this false appearance was to operate a reconciliation with the Duke, both she and her husband were soon given to understand, that it would not have the desired effect. Lady Jane, so far from being eager to convey the news to her brother, had delayed it till she was in the sixth month of her pregnancy, when the secret would no longer conceal; she even then was obliged to employ her worthy and honourable friend, Lord Crawford, to intercede in her behalf; but neither her own letter nor Lord Crawford's intercession had the least effect upon the Duke; he continued inflexible, and was even more offended at her than ever; he made no answer to her letter, and this silence alone was sufficient to have convinced Lady Jane that her scheme had proved abortive. It was amazing, therefore, that Lady Jane should have persisted with so much trouble, and such imminent danger to herself, in carrying on so absurd, so fruitless, and so wicked an undertaking, and that she should have pushed it the length of a delivery of *twins*, when one child was much more than she had the least occasion for at the time. It is extremely remarkable, that, in a letter, bearing date the very day of the birth, Sir John Stewart writes to Lord Crawford: "My Lord, I have delayed doing
 " myself this honour longer than I inclined, in hopes of hearing from
 " Mr. MacElligot of your being where letters were more sure of find-
 " ing their way, than by directing them at the army; but could not
 " restrain my inclination longer, my Lady Jane having this day re-
 " ceived letters from Scotland, *informing her of the surprising effect*
 " her letter to her brother, inclosed in that you so kindly wrote to the
 " Duke of Douglas, has had on him. It is probable, since he has
 " openly avowed the receipt of these letters, he cannot have been
 " wanting so much in common decency and good manners as not to
 " have made some answer to that of yours at least, however different
 " from what was to be hoped on such an occasion. By what is wrote
 " to her ladyship he is in high passion and displeasure, and threatens no
 " less, they say, than stopping the annuity she has from him, her only
 " means of present subsistence; which, if true, she hopes, from your na-
 " tural inclination to justice and uncommon friendship you have ever
 " showed her, that you will interpose your interest with the Duke of Argyll,
 " and even at court, to prevent that strange man from exposing himself
 " by so barbarous an injustice as such an attempt must appear to all the
 " world, who are not blinded by groundless passion and unprovoked pre-
 " judice." They were fully apprised therefore, before the accomplish-
 " ment of the crime, if there was any, that their schemes were frustrat-
 ed,

Purf. pr. 61,
C.

ed, and that the birth of children, real or supposititious, could produce no effect upon the Duke. After this, it was the height of madness to go on with it, if Lady Jane's situation was affected; a miscarriage could have been feigned as easily as a pregnancy; and at no rate was there the least occasion to burden themselves with twins."

The next motive ascribed, was the prospect of obtaining a larger allowance from the Duke, because of the increase of their family. ^{2d Motive.}

If Lady Jane Douglas was guilty of so great a fraud, merely from a notion that she might thereby prevail on the Duke to give her a little addition to her annuity of 300 *l. per annum*, it was surely as contemptible an idea as ever entered into the head of a woman. The foundation on which this conjecture of the pursuers was built, is a letter from Sir John to Lord Haining, of date 25th August 1748, in which he writes: "My Lord, as her late increase of family must necessarily have been attended with extraordinary expences, she expects your friendship will incline you, in your prudent manner, to give a proper hint to her brother, to assist her with a proportionable supply on this occasion." And, in some of the letters lately published, which appear to have been wrote by Lady Jane in the year 1749, after the pension had been withdrawn, she complains of her brother's injustice in taking that step at a time "when she was fondly hoping for an increase to that small allowance, now her family-expences were necessarily augmented." But here the pursuers endeavour to convert the *use* which was very naturally made of this event after it happened, *into the cause* of the event. Is it not a certain fact, that their family, and, consequently, their expences, were increased? and is it not plain, that when they had the addition of two children to their family, with their nurses, and other necessary attendants, they had occasion for more money, after the delivery than before it? To incur a certain annual expence, in order to get money to defray that expence, would have been ridiculous. It was indeed natural for them to do every thing in their power to conciliate the Duke, and to obtain from him such allowance as was necessary for the support of their family; but Lady Jane knew well that solicitations of this kind were most disagreeable to the Duke, and that, by applying to him for any augmentation, she ran the greatest risk of losing the whole, without any prospect of being benefited: for, supposing the Duke had listened to the argument, and, in place of 300 *l.* had allowed her 500 *l.* or 600 *l. per annum*, she would have been in no better situation, after defraying the additional expence occasioned by the children, than she was upon the annuity of 300 *l.* without the children. ^{Purs. pr. 64, C.} ^{Purs. pr. 1066.}

Besides, when Sir John and she found that this experiment would not answer, why did they persist in it to the last, and involve themselves in ruin and distress upon account of these children?—The pursuers insist much upon the early advice which they got of the Duke's disbelief, and of the reports which were current in Scotland.—Is it then credible, that they not only would have persisted in their scheme, but even made a second trip to Paris in November 1749, in order to accumulate trouble and expence upon themselves, by picking up another child, after they were certain that it would serve no good purpose for them to do so? Nay, it is extremely remarkable, that this second journey to Paris was made after their pension had been stopt; so that they had nothing but poverty and distress before their eyes; and yet the pursuers would suppose that they were guilty of such unheard of obstinacy, as to make that expedition with no other view, but to accumulate guilt, and to heap expence and danger upon themselves.

3d Motive.

The next reason assigned, was the supposed resentment of Sir John and Lady Jane at their next heirs. This is the motive which has generally occurred in those instances of *partus suppositio*, which have in other countries been tried; nor indeed is it easy to figure any other reason, which could determine a man and a woman, deliberately, to introduce a supposititious child into their family.

The pursuers, however, seem to have adopted this reason, merely because they find, that it has in other instances occurred; for, in the present case, it has not the least vestige in the evidence. Sir John Stewart had already a son of his first marriage, with whom he lived on the best terms, and who was of course to succeed to the estate of Grandtully, in case Sir George died without children; and, even if it should be supposed, that Sir John had a dislike at some of the remote heirs of that entail, this was hardly a sufficient reason to induce him, far less Lady Jane Douglas, to commit the crime of *partus suppositio*.

With regard to the estate of Douglas, it is believed the Duke had not at that time determined in what manner he was to settle it, whether upon the Duke of Hamilton, the family of Queensberry, Lord Selkirk, or in what other channel.—Marquis James's last settlement stood in favour of Lady Jane; Lord Selkirk had likewise a claim upon another deed executed by the Marquis. The Duke had, in 1717, made a settlement in favour of Lady Jane; whom failing, the Duke of Queensberry, and a certain series of heirs therein mentioned.—This settlement he afterwards cancelled, but without making any new one and in that way matters stood when Lady Jane was married and had her children.—The Duke of Hamilton, who was the nearest heir-male, was only major in 1745, and, till then, had been at schools and colleges

colleges in England; so that Lady Jane, who went abroad in 1746, never had any opportunity of being acquainted with him.—It is believed she had as little acquaintance of Lord Selkirk, who was then a young man, and she never had received any injury, either from him, the Duke of Hamilton, the family of Queenberry, or from Lord Hyndford, or any of those persons who had pretensions to the succession, either as heirs-male, provision, or of line, of the family of Douglas, failing issue of herself or her brother.—Why, therefore, should she have conceived the idea of picking up children in the streets of Paris, to disappoint heirs whom she never had the least reason to be displeased with, and any of whom would have been very honourable representatives of the family of Douglas?

It is true, certain agents of the family of Hamilton, and who afterwards had a considerable share in procuring settlements of the Duke of Douglas's estate upon that family, appear to have joined in the malicious report which was raised against Lady Jane, after the news of her delivery came to Scotland.—But it was only *then* that their operations began.—The account which Lady Jane had wrote to the Duke from Aix-la-Chapelle, of her marriage and pregnancy, had rather incensed him the more against her. The friends of the Duke of Hamilton seem to have struck in; and it may easily be supposed, that they were at no great pains to make up matters between the Duke of Douglas and his sister. But there is clear proof, from the letters in process, that Lady Jane and her husband, till their return to this country, remained in total ignorance of these intrigues, which they afterwards so much complained of.—While they were at Reims, Sir John appears to have corresponded, in a familiar style, with the gentleman who was agent, both for the Duke of Douglas and the Duke of Hamilton, at that time, and who is one of the tutors of the present Duke of Hamilton. In one of these letters, bearing date, Reims, 1st December 1748, he begins, “ Dear Archy,” and says, he writes to him as *his old and good friend*; and, from the whole tenor of the letter, it appears in the first place, that Sir John did, at that time, understand Mr. Archibald Stuart to be his friend; and, 2dly, that neither Lady Jane nor he entertained any pique or ill-will at the Duke of Hamilton. He says, “ Dear Archy, though by your laziness to write, when I was in London, our correspondence, in an epistolary way, has ceased, my old acquaintance and real regard inclines me to renew it, the rather that I have been informed of the obliging manner you was pleased to express your sentiments on hearing the honour Lady Jane Douglas had done me, in giving me her hand. I have no doubt you know, ere now, the happy consequence of our coming together, so shall say no more of it, but that, as his Grace of Douglas has declared, “ and

Purf. pr. 522,
G.

“ and seems resolved to let the honours and old estate of Douglas sink
 “ into that of Hamilton, Lady Jane, by her goodness to me, may
 “ probably preserve that of Angus from becoming extinct.” He then
 expresses some satisfaction, that one of the remote heirs of entail of
 his own family was thereby put at a greater distance ; and he proceeds
 in these words : “ Now, dear Archy, if I may talk to you as my old
 “ and good friend, it is in your power to lay me under an unpayable
 “ obligation. You must know, that my Lady Jane, partly by debts
 “ she was bound in for my Lady Marchioness, was obliged to borrow
 “ 700 l. on her bond of provision of 20,000 Merks ; Peter Haldane
 “ joined in the security, on having an assignation to the bond, for his
 “ relief ; there is two years interest due on the bond, which Sir Alex-
 “ ander Ramsay, the creditor, insists on forthwith, or will proceed to
 “ diligence for payment of his principal sum ; Mr. Haldane has wrote
 “ to my Lady Jane, that he neither can pay interest nor principal ; so,
 “ if my Lady does not fall on ways and means to satisfy Sir Alex-
 “ ander, he will be obliged to intimate the assignation to the Duke.
 “ This she is most unwilling should happen, or any thing that can
 “ possibly give his Grace the least uneasiness ; therefore, as she looks
 “ upon the security as very good, knowing your regard for me, and
 “ your connexion, by being the chief manager in the Duke of Dou-
 “ glas’s affairs, she and I desire, as the most material favour you can
 “ at present do us, that you would put yourself in Mr. Haldane of
 “ Bearcrofts’s place, by his assigning my lady’s bond to you, and that
 “ you would answer Sir Alexander’s demand.” And in the conclusion
 Purf. pr. 525, he says, “ if it is acceptable, I offer my humble duty to the Duke of
 “ Douglas, who I am unfortunate in not having the honour of being
 “ more known to. I beg you’ll make offer of the same to his Grace
 “ of Hamilton, who, I rejoice to hear, is perfectly recovered. God
 “ grant he may keep well, &c.”

But when Lady Jane and he returned to this country, and were ap-
 prized of the endeavours which were using to impress the Duke of
 Douglas against his sister, and after Lady Jane had been refused ac-
 cess, when a visit was offered by her to the Dutchess of Hamilton, in
 the year 1752, and had been ill used by Mr. Stuart in the affair of
 giving up the papers, as appears from her letter to Mr. Hamilton the
 minister, above recited, both Sir John and she altered their note with
 regard to that family and their agents, and complained loudly of their
 Serv. 41.
 Def. pr. 882
 to 835. behaviour. The enmity, therefore, against the family of Hamilton,
 and their agents, took place only after Lady Jane’s return to this coun-
 try, and had no existence before the birth of the children.

But, indeed, the idea of introducing children into the family, to dis-
 appoint either the Duke of Hamilton, or any other person, would have
 been

been totally ridiculous, as the estate was in the Duke of Douglas's own power, and he was under no necessity of leaving it to her children, more than to any other person.

The fourth reason assigned, viz. the hopes of administering the Duke's estate after his death, is equally untenable. Sir John was older than the Duke himself, Lady Jane not much younger, and of a weaker constitution ; they knew that the Duke was offended at them, and they never could expect that he would leave them any direction or management of his estate, supposing he should settle it on their children. 4th Motive.

The last motive suggested, was the credit of giving heirs to so illustrious a family. Last Motive.

If Lady Jane entertained any desire of having children to represent the family of Douglas, this must have proceeded from an idea of the greatness, the honour, and the dignity of that family, the very formation of which idea was inconsistent with her supposed scheme of picking up children in the streets of Paris, who might turn out most unworthy representatives of so ancient a house. It was indeed natural for Lady Jane to wish to have children of her own, provided she had any expectation, that these children might one day succeed to the Duke of Douglas ; but to steal away the children of others, in order to impose them on the Duke, was a most absurd idea, more especially when it is considered, that she was not yet past the time of having issue of her own body. Answer.

The second and most material branch of the proof, now relied on by the pursuers, is that from which they endeavour to show, that Lady Jane Douglas was not delivered on the 10th July 1748, and that she was in another house than La Brun's on that day. This proof consists of two parts, 1mo, The oaths of Godfroi and his wife, and certain blank articles in their household-book, from which it is inferred, that Sir John, Lady Jane, and Mrs. Hewit were in the hotel de Châlons on the 4th and 13th of July, and all the intermediate days. 2do, Certain letters wrote at the time, which are said to be inconsistent with the supposal of a delivery on the 10th. 2. ALIBI
ON THE
TENTH JULY, AND
NOT DELIVERED
THAT DAY.

The memorialist is confident, that, when the evidence on these points is examined, it will appear to be a most inconclusive and desperate attempt, substituted in the very last stage of the cause, in place of other proofs now entirely abandoned, but which were once said to be founded on public records, and other infallible documents, and from which, in like manner, an alibi on the day of delivery, though not in the house of Godfroi, was endeavoured to be established.

These proofs, attempted by the pursuers in France, having undergone some extraordinary variations, it will be proper, on this branch

of the cause, to give your Lordships a view of the boasted discoveries which made such a noise in the out-setting of this cause, together with the surprising changes which happened in them at different periods, till they were at last produced to your Lordships, in a shape totally the reverse of what they originally appeared in.

It will be remembered, that Mr. Andrew Stuart, the tutor and agent of the Duke of Hamilton went to Paris in July 1762, and from the productions since made by him, it appears, that, on the 11th September that year, he presented a requête to the lieutenant of police, setting forth, that it would be of importance to discover Madame La-Brun and Pierre La Marre, and desiring the aid of the police for that purpose.—The lieutenant de police remitted him to Mr. Buhot, one of the inferior officers, who accordingly was employed from that time forward in making researches for Mr. Stuart.

Def pr. 747.

On the 16th October that year, Mr. Buhot made a report to the lieutenant of police, setting forth, that he had been on the point of giving up his enquiries, when he at last discovered, that a foreign gentleman had lodged, in the month of July 1748, with his wife, and another lady, in Michelle's, at the hotel d'Anjou, rue Serpente; that, upon this discovery, Mr. Stuart and he had gone to the hotel, where they found Michelle's livre des logeurs, (*i. e.* the book kept for the police,) with an article inscribed in it in these words: "M. Fluralt Ecoffois, et sa famille entré le 8th Juillet 1748;" which article Mr. Andrew Stuart believed was of the hand-writing of Sir John Stewart; that the account given by the people of the house was, that the stranger gentleman, with the two ladies, after having been some days in the inn, asked Madame Michelle to procure a good nurse for them, as they intended to bring home a child, which they had at nurse somewhere about Versailles; that accordingly the nurse Favre was spoke to, and *she having been hired*, they set out a day or two after, and brought the child, who appeared to be *several months* old; that he, Mr. Buhot, had, in the next place, found out the Dame Favre, who said that the female-companion, *i. e.* Mrs. Hewit, (who never spoke a word of French in her life) had told her in conversation, that the child was a twin, that his brother was dead, and that the delivery had happened at St. Germain;—from all which Mr. Buhot draws this conclusion, that the lady was not delivered on the 10th July 1748, and that the child brought to Michelle's was not her son.

Upon the 1st November, Mr. Stuart and Mr. Buhot, fully satisfied that Sir John and Lady Jane had entered to the hotel d'Anjou upon the 8th July, and that the name of Fluralt had been wrote in Michelle's book by Sir John Stewart himself, made application to the lieutenant of police, in the name of Mr. Buhot, setting forth the great importance of this book, and praying for an order that it might be produced before Monsieur du Ruisseau, the commissary of the quar-

ter,

ter, and by him deposited in the hands of Monsieur Buhot, with the proper solemnities, there to remain in safe custody till there should be occasion to found on it. Another petition was given in by Mr. Stuart himself in these words: "That as tutor foresaid, he is in suit before Def. pr. 1060, " the Court of Session in Scotland, with Archibald Stewart, anent the F. " succession of the deceased Duke of Douglas; in the which suit it is " of consequence to the Duke of Hamilton to prove, that Sir John " Stewart and Lady Jane Douglas his spouse, arrived the 8th of July " 1748, in the rue Serpente à l'hôtel d'Anjou, and lodged there un- " der the name and designation of Mr. Fluralt, a Scotchman, and his " family; for which purpose it is expedient, that the book of the " person who keeps this hotel should be lodged where it cannot be " altered."

" Having seen the above, Sir, you will please ordain the said Michelle, a barber, who then kept, and still keeps, the said hotel d'Anjou, " to lodge in the hands of such person as you shall think proper, to " take care of the above register, the state thereof being in the first " place attested by the commissary of the quarter, who thereon shall " raise a verbal process, And you will do justice. (Signed) Clos."

And below is written:

" Having seen the present petition, we ordain, that Michelle, a " barber, keeping the hotel d'Anjou, rue Serpente, shall lodge in the " hands of Buhot, inspecteur of the police, the register of the in- " specteur of police, wherein he is in use to insert the days of the " arrival, as well as the names and qualities of the persons who came " to lodge in his hotel, the state whereof being in the first place at- " tested by the commissary of the quarter, who thereon shall extend " a *proces verbal*. This 5th November 1762. (Signed) De Sartine."

In consequence of which decree, Michelle appeared before the commissary, and his book was deposited with all the usual forms, in the hands of Mr. Buhot.

It is somewhat singular, that Michelle, in the minute or *pro- ces verbal* extended on that occasion, is made to say, "That the en- " try concerning Fluralt is, so far as he can remember, of the " hand-writing of the person who called himself Fluralt;" yet, when Def. pr. 1062, " examined as a witness in the cause, he has deposed, "That when the A. " deponent was in the house of commissaire du Ruisseau, to put his Purf. pr. 861, D. " register in the hands of Monsieur Buhot, he said, that the article of " the entry of these three strangers was wrote with the hand of Ma- " rie his servant-maid, and that he was very sure that it was not of the " deponent's own hand-writing. Depones, that he knows that there " are several articles in the same book wrote with the hand of the " said Marie, but the deponent does not remember if there are any of " them

“ them on the same page on which is the article of the entry of these strangers.” The fact is now admitted on all hands, that the article was wrote by the *servant-maid* of the hotel ; and indeed the book contains a variety of other entries in her hand-writing, some of them in the very same page with Fluralt, and staring these gentlemen in the face, when they made the bold and injurious averment that the article was wrote with the hand of Sir John Stewart.

Mr. Stuart, misled by the false reports and erroneous opinions of Monsieur Buhot, appears, in the same month of November 1762, to have composed a memorial of the facts and pretended discoveries, to be laid before his French council ; in consequence of which these gentlemen gave a signed opinion, on the 10th of December, advising the much celebrated Tournelle action, accusing Sir John Stewart and Mrs. Hewit of *partus suppositio*. Another very long memorial was at the same time made out by him, containing a more minute detail of the facts and discoveries, intended also for the use of the council, both here and in France.

Def. Append.
No. ix. p. 25.

In these memorials Mr. Stuart sets forth, “ That the succession of the Duke of Douglas is contested, on the one hand by the Duke of Hamilton, the heir-male of the family, on the other hand by Archibald Douglas, calling himself the son of Sir John Stewart and Lady Jane Douglas : That upon the death of the Duke, Sir John Stewart, *administrator-in-law of his son*, was obliged to give proofs of his son’s birth, in order to put him in a condition of pretending to the succession of the Duke of Douglas : that accordingly, in September 1761, Sir John Stewart *undertook to give proof* of the fact in question, and produced witnesses who were examined upon it.— That the Duke of Hamilton and the other competitors having made no objection to the validity of the proofs, the said Archibald Stuart *has been lately acknowledged*, according to the customs of Scotland, as the true son of Sir John Stewart and Lady Jane, and nephew of the Duke of Douglas ; and it is in this capacity, *that he is now laying claim to the succession of the Duke*, for which effect he is at present engaged in a process before the Court of Session in Scotland.”

After giving this *impartial* account of the service, and other proceedings in Scotland, Mr. Stuart proceeds to mention, that the other tutors, thinking it their duty to enquire further into this matter, *lest they should be blamed for their neglect by the Duke, when he came of age*, had commissioned him to go into France for that purpose ; that he had applied to the lieutenant general of police for his assistance, which having been granted, he, and some of the inferior officers, had been employed for fundry weeks ; “ And that they had almost despaired of
“ finding

“ finding out any thing with regard to this birth, when, happily, they had at last made a discovery of things which would throw great light upon it.” Mr. Stuart next gives an account of the evidence in the service, and of the enquiries which he had in vain made for a Madame La Brun, *who kept a hotel, or chambres garnies*, in the year 1748, and for a Pierre La Marre, accoucheur. “ At last, says he, we have happily discovered, that at the time of the pretended delivery, Lady Jane lodged at Paris in *another house*, under a disguised name, and in good health. This house was but lately discovered, and by good fortune, the landlord and landlady are still alive, and remember circumstances which have led to a full discovery of the whole affair.” Mr. Stuart then gives a detail of the conversation which Mr. Buhot and he had with the Michelle family, and of the entry in their book of Fluralt, on the 8th July, which Mr. Stuart, “ After considering it attentively, *was persuaded* was the handwriting of Sir John Stewart.” He says, that in this conversation Madame Michelle told him of a journey made by the strangers four or five days after their first arrival at the hotel, to a village near *Versailles*, to bring their child; that, at their desire, she got a good nurse for the child, viz. the woman Favre, they having complained, that the child had suffered from bad nurses; that the two ladies remained constantly in the house, though the gentleman went out often; that the gentleman complained much of the noise of another inn, where they had lodged during *four days*, before coming to the hotel d’Anjou, and *she thinks they made mention of the hotel de Chalons*. “ Both Michelle and his wife, says he, are certain that they did not lodge at any other hotel, even one day, after coming to their house, and they remember, that on the first entry of these strangers, they made enquiry, if there were bugs in the house.”

Mr. Stuart also relates a conference with Madame Blainville, who told him the same fact, which has since been deposed to by Mrs. Hewit, about a bad nurse having been got for the child when they came to Michelle’s, and that a whelp was put to her breasts, *pour former un bout*, the want of which was the reason why the child could not suck.

He further gives an account of his discoveries at Reims, which, as well as those at Paris, are very different from the facts which he has since brought in proof. They lodged, says he, in the house of Madame Hibert, “ And the girl who let the apartments to them, (i. e. Louise Hibert) says, that during Lady Jane’s residence in that house, she had all the appearance of a woman with child, as far as she could judge by her shapes; but she wore a small hoop, and a hoop-petticoat, which hindered one from

“ judging exactly of her state ; that her belly did not increase in size,
 “ during her stay in this house,* so far as she could observe ; that see-
 “ ing Lady Jane often working at child bed-linen, she, (Miss Hibert)
 “ asked her, for whom it was? but Lady Jane would not tell her ; that
 “ her breasts were always covered ; that she had not however the ap-
 “ pearance of a woman far advanced in her pregnancy, but only of a
 “ woman a few months gone ; that she went out very seldom, and
 “ was almost constantly in her room.” This is the witness, upon
 whose negative testimony they now endeavour to show, that Lady
 Jane had not any appearance of pregnancy whatever in the house of
 Mr. Hibert. Several other circumstances are mentioned of their trans-
 actions at Reims, which it is unnecessary here to enter into. The
 memorialist shall only observe, that Mr. Stuart’s enquiries about the
 pregnancy have been very limited, as his council are not informed,
 that at Aix-la-Chapelle, or Liege, there was any such appearance to
 be observed. A profound silence is also observed with regard to the
 Abbé Hibert, the rencounter with Giles and Menager, and every other
 circumstance which might seem favourable for the memorialist. They
 are not even made acquainted with the real appearance of Michelle’s
 book, and, particularly, that the article, 8th July, is wrote posterior
 to an article of the 12th.

Mr. Stuart sums up his whole discoveries in this manner, and
 draws the following conclusions from them: 1mo, That there is no
 doubt of Mr. and Madam Stewart and Mrs. Hewit’s having arrived at
 Paris on the 4th July, and having returned to Reims in the middle of
 August.—2do, That the delivery must have happened subsequent to
 their arrival at Paris, and prior to their entry to Michelle’s ; but as to
 this, it is in the first place improbable, that if she was delivered be-
 tween the 4th and 8th July, she would have been in condition to be
 removed to Michelle’s upon the 8th ; and besides, the account all a-
 long given of this delivery has been, that it happened on the 10th ;
 and therefore, *if the fact be true, that they entered to Michelle’s on the*
8th, it follows, of necessary consequence, that she was not at all de-
 livered.—3tio, The identity of the persons, and their actual residence
 at Michelle’s, is fully established by the nurse Favre, &c. by the de-
 scriptions given of them, and other circumstances.—4to, It only re-
 mains therefore to show, that their entry was upon *the 8th July* ; this
 is *sufficiently proved* by the *livre des logeurs*, a book kept with the
 greatest exactness, because kept for the inspection of the officers of po-
 lice ; and likewise by the evidence of the Michelle people themselves ;
 and besides, it is not probable that Sir John Stewart, *who wrote this*
entry,

*N. B. She was only three weeks in this house, in the 8th and 9th month of her pregnancy.

entry, would carry it further back than the true date, as it was his interest rather to do the contrary.—5to, It will be clearly proved, that Lady Jane was not delivered in the hotel d'Anjou, and the circumstance of the age of the child shows, that she could not at all have been delivered of that child in Paris.——The result of the whole is, that Lady Jane Douglas's delivery was entirely a fiction, “ and nothing remains “ to give compleat conviction of the imposture, but a discovery of “ *the true father and mother*; the different nurses of the children; the “ village where the youngest was nursed; the person who acted the “ farce of an accoucheur; and, *the hotel in which Mr. and Madam Stewart lodged during the first four days* of their arrival at Paris. “ Hitherto these things are undiscovered, though all possible enquiry “ has been made concerning them.”

Mr. Stuart concludes, with desiring to know of the council, what precaution should be taken *to preserve the proofs, resulting from the declarations of those witnesses*, and to prevent the inconveniency of their deaths before they should be heard in judgment. He says, “ it will “ probably be a long time before any proof can go out. as the action “ is not yet commenced, and besides other necessary delays, the opposite party will, no doubt, throw every obstacle in the way, and do “ every thing in their power to retard the cause.” He therefore begs the council to suggest some method of preserving the testimonies of the witnesses, in case of death, without hurting their evidence, and he mentions, that *precognitions* are common in Scotland, sometimes upon oath, and sometimes without oath, and that declarations or depositions of this sort, might at least be of use in Scotland, to facilitate and hasten the process there to be raised.

The opinion of the council bears, That the intention of their client's Def. append- being to prove Lady Jane Douglas's delivery to have been feigned, P. 41. and her children supposititious, an accusation of a very grave and important nature, *it was necessary to give the most scrupulous attention to the circumstances, before undertaking such a process*; that the facts, however, which were laid before them, *if proved*, would amount to a full conviction of the crime.—The council then proceed to lay down the principles of the law of France, as already explained, in questions of filiation; they admit the force of those general presumptions, arising from possession of state and baptismal record, and only endeavour to find out objections to them in this particular case, founded chiefly on the argument above noticed, that Mr. Douglas could not possibly have any possession of state as the son of Lady Jane Douglas, during the first months of his life. The 10th of July, say they, has been fixed on for the birth, “ but if it can be demonstrated, that Lady Jane, though she was indeed at Paris at that “ time,

“ time, could not *possibly* have been delivered *there*, this proposition, though negative, being well established, will be a sufficient proof of the *partus suppositio*. This proposition (say they) is the necessary result of the facts stated to us in the memorial.”—“ She indeed affected a pregnancy at Reims, but so ill concerted, that it was by no means far enough advanced to denote an approaching delivery. On the 2d July she set out from Reims, with her husband and Mrs. Hewit, and arrived in Paris on the 4th.—How they employed themselves during the first days of their residence at Paris, is not yet cleared up, but *on the 8th July*, they entered to the hotel d’Anjou; they there *disguised their names*; the register bears, *Mr. Fluralt, a Scotjman, and his family, entered on the 8th July 1748*. This concealment of the name is a new circumstance of the fraud, as they never would have *disguised* their names, had the birth been real; the identity of the persons who were in Michelle’s, under this borrowed name, will be clearly proved, &c.”

The council next proceed to demonstrate the *impossibility* of Lady Jane’s delivery on the 10th July, from a variety of circumstances which they suppose will be proved. They lay it down *for certain*, that the entry to Michelle’s was on the 8th July, from which time, to their departure from Paris, Lady Jane and her family remained constantly in that hotel; and they say it will be proved, by the family of Michelle, that she was not delivered in that house, nor had any appearance of delivery; that the child brought by them to Michelle’s could not, from his age, have been born of Lady Jane Douglas at Paris, because he appeared to be *months* old, whereas Lady Jane had only been a *few days* in Paris, and that she could not have produced him at Reims, because she was supposed to have left that place with child. “ It is in this manner (say they) that we will establish, without difficulty, the absolute impossibility of a delivery either at Paris or at Reims.” And they further take notice of the great difference which appeared between the twins, when the youngest was brought to Reims, viz. that the one was *strong*, had a brown complexion, and *black eyes*, the other *weak*, a fair complexion, and *blue eyes*, which was another presumption of the imposture. In these circumstances of the case, they conclude with advising, that the *heirs of the Duke of Douglas* should not hesitate a minute to begin their action; and, with regard to the form of it, they argue, that it must be in the way of an *extraordinary* or *criminal* proceeding, the *supposition* of children being a great crime; and they are at great pains to show, that this criminal action must be instituted in France, the *locus delicti*, and before no other court but the *Tournelle* of the Parliament of Paris.

Upon

Upon the 17th November 1762, Mr. Stuart wrote home to Mr. Baron Muir, another of the tutors, in the following words: "It is but very lately that I have been able to get *at the bottom* of this affair, when I was almost on the point of giving it up as desperate: Had I continued following the traces they gave in their proof, they could not have been found out to the end of the world; the researches after the accoucheur, and the imaginary Madame La Brun, have consumed me much time, but at length I have found out *where they really did live here*, that it was in the house of one whose name bears no resemblance to La Brun; that they were in that house *the very day* of the pretended accouchment, as well as before and after that date; that there was no delivery at that time, nor the appearance of a person either with child, or newly delivered; that, during their short residence at Paris, they made an excursion to some place of the neighbourhood for one day or two, and brought with them to their hotel a child, farther advanced than was possible for any child, born after leaving Reims; and that this was the child carried with them to Reims, who is now the present competitor.—I have traced their journey to Reims, as well as their places of abode here, and several of their other manœuvres, which they could not possibly suspect would ever see the light.—It was only in the month of October that I got the first dawnings of truth, and since then I have travelled some hundred miles, at different times, following out the circumstances which lead to conviction; still there are some few things wanting to make the discovery of every circumstance compleat; what I am absolutely sure of is, that the account given by Mrs. Hewit is false, and not only so, but that, from the time of Lady Jane's arrival, to the time of her leaving Paris, there was nothing resembling either grossesse or accouchment, but a great deal of mystery and retirement, which amazed the people of the house where they lived."

On the 17th December, Mr. Stuart and Sir Hew Dalrymple, still satisfied of the *alibi at Michelle's*, gave in their first plainte to the Tour-
Def. pr. 731.
 nelle of the parliament of Paris, accusing Sir John Stewart and Mrs. Hewit, *subjects of Great Britain, and residing in Scotland*, of the crime of *partus suppositio*.—In this plainte they mention Lady Jane as having put on the first appearance of pregnancy at Reims. They say, however, that she did not seem so far advanced in her pregnancy as she ought to have been; that no Madame La Brun, possessing an auberge, or inn, could be found in the Fauxbourg St. Germain; that Pierre La Marre was imaginary; that there could be no ondoyment of Sholto, because none could be found on record; that Lady Wigton had called the man-midwife a midwife; that Lady Jane's miscarriage at Reims was, according to Sir John's own account of it, only an indisposition incident to women

[*lors qu'elles cessent d'être en âge d'avoir des enfans*].—They argue, that Lady Jane would never have wandered into foreign countries, had she not intended to feign a pregnancy; that she never would have travelled in stage-coaches, had she been really pregnant; that she would not have had three lodgings in Paris, had she been really delivered; that she ought to have had an expert accoucheur; that the children ought not to have been separated from each other; that, as she was a lady of strict piety, her children ought to have been baptised in a different manner; and that, in the baptism of the defender, they had committed a breach of the laws of France, which ordained the day and place of delivery to be inserted in the baptismal record; and lastly, they offered to prove, that, after having arrived at Paris on the 4th July, *probably* at the hotel de Chalons, rue St. Martin, they entered upon the 8th of the said month to Michelle's, and were seen there daily from that time for several weeks; that Lady Jane had no appearance of indisposition, either there or at Dammartin; that the child which they brought to Michelle's appeared then to be several weeks, *or some months old*; that the eldest twin was strong, of a brown complexion, and had *black eyes*; the youngest weak, a fair complexion, and blue eyes.

It is somewhat remarkable, that there is not a single observation or in fact, in this original plainte, that is not either frivolous to the last degree, departed from now by the pursuers themselves, or proved to be false.

It will be observed, that, from the first time of Mr. Stuart's conversing with the family of Michelle, which was in October 1762, he had intelligence of the *hotel de Chalons*, as a house where Sir John Stewart and his family had, in all probability, lodged before coming to Michelle's; and indeed Mr. Stuart, before he went to France, had an opportunity of knowing that Sir John Stewart had a connexion with the hotel de Chalons, as he saw in the trunk of Lady Jane Douglas, which was opened in his presence before the service, a letter from Reims, directed to Sir John at that house, and which letter was taken out of the trunk, at his own express desire. Besides, it is a fact which Mr. Stuart could hardly fail to have intelligence of, that Godfroi was a sort of agent or servant of the people of Reims, employed by them in their commissions, and that the passengers in the stage-coach, from Reims, generally lodged in his hotel. It cannot therefore be doubted, that Mr. Stuart did, from his first arrival in Paris, or at least from the time of his first conversation with the Michelle family, apply himself to Godfroi, and make the proper enquiries, whether and how long Sir John Stewart and his family had lodged at that hotel upon their arrival from Reims; but, from Mr. Stuart's memorials, and from the facts

facts stated in the first plainte, it is extremely certain, that Godfroi at that time remembered nothing earthly about the matter ; for Mr. Stuart, in these memorials, declares himself entirely ignorant where Sir John and Lady Jane lodged for the first *four days*, and all that he says in the plainte is, that they *probably* lodged in the hotel de Chalons. It would seem, that Godfroi did not at that time, either from his memory or from his books, recollect any thing concerning these strangers. At the same time, as the pursuers knew that Godfroi's was the house where the people in the stage-coach from Reims generally lodged, they gave him a citation on the *18th December*, to appear as a witness on the first plainte, in order to prove that fact, and from thence to infer the probability of Sir John and Lady Jane's having put up in his hotel for the first four days.

Sir John Stewart having, in his declaration, which was taken in Scotland on the 14th, 15th, and 16th days of December 1762, made express mention of the hotel de Chalons, as the house where Lady Jane, Mrs. Hewit, and he had lodged, for the first two or three days after coming to Paris, an addition was made to one of the private memorials, stating some of the facts declared by Sir John ; and, *inter* Def. appen-
alia, insisting, " That Lady Jane having landed in Godfroi's on the dix, 53,
 " 4th July, with her husband and Mrs. Hewit, and *having come upon*
 " *the 8th to lodge at Michelle's*, there was not time for a residence of ten
 " or twelve days at the pretended Madame La Brun's, nor indeed was
 " there any interval between their residence at the hotel de Chalons,
 " and their entry to the hotel d'Anjou, as it would be proved that they
 " remained at the hotel de Chalons to *the 8th July*, when they paid
 " their bill, and entered to Michelle's." This addition appears to have
 been made, as soon as the news of the declaration reached France, *i. e.*
 about the 23d or 24th of December 1762.—From the declaration,
 compared with the date of arrival of the stage-coach, which was proved
 by a certificate from Reims, the time of Sir John and Lady Jane's en-
 try to the hotel de Chalons, was fixed to the 4th July, so that the fact
 then appeared to be certain, that their residence in Godfroi's was from
 the 4th to the 8th.

About this time a new discovery was made by the pursuers, which perplexed them a little, with regard to the residence at Michelle's, from the 8th July downwards.—They found, in the general record of police, an article, of date 12th July 1748, " bearing Mr. Stewart, a Scots gen-
 " tleman and his wife," in the hotel de Chalons. This was consid-
 ered by them as infallible evidence, that Sir John and Lady Jane were
 actually of that precise date lodged in the house of Godfroi ; and, in
 order to reconcile this new discovery with the book of Michelle, which
 was also considered to be clear proof of the entry to that house upon
 the

the 8th, it was necessary to contrive a hypothesis, which was, that Sir John, Lady Jane, and Mrs. Hewit, having immediately, upon their entering to Michelle's, pretended to make a jaunt to the country to bring a child from the nurse, and, having set out accordingly, they, in place of going to the country, did return privately to Godfroi's, where they again took up their quarters, were found there by the police-officer on the 12th, staid to the 13th or 14th, and then returned to Michelle's with a child.

Godfroi's memory appears also to have been wonderfully restored after the arrival of Sir John's declaration in France, and after the date of the entry to the hotel de Chalons had been fixed to the 4th July, by a comparison of the declaration and certificate about the stage-coach.—Upon turning up his household-book, he finds certain articles furnished to an anonymous company on the 4th July, and subsequent days, and these he applies to Sir John, Lady Jane, and Mrs. Hewit.—The memorialist cannot doubt that he was informed of the above particulars, before he pretended to make the application of his *livre de dépense*. There is real evidence, from Mr. Stuart's memorials, that he was at first entirely ignorant of the whole affair. He afterwards became remarkably knowing, and distinct in his remembrance of every circumstance. The connexion between inn-keepers and inferior officers of police in Paris is well known, and the influence which Mr. Buhot had over Mr. Godfroi was natural and accountable.

In their plainte to the Tournelle, bearing date 4th January 1763, called the first additional plainte, they say, " That Sir John, Lady Jane, " and Mrs. Hewit lodged, from the 4th to the 8th July, in the house " of Godfroi; that they paid their bill on the 8th July, and left that " house, which agrees with their entry upon the same day to the house " of Michelle; but, though they took this new lodging at the hotel " d'Anjou, they returned almost immediately to Godfroi's, at the ho- " tel de Chalons, where they were on the 10th, known under the " name of *Stewart*, and this must have been during their absence " from the hotel d'Anjou, under pretence of bringing a child, whom " they supposed to be at nurse, and whom they produced a few days " after their entry to the hotel d'Anjou."—In this plainte they make use of Sir John Stewart's declaration in Scotland, though lying under the seal of the court of session, by setting forth certain facts, as affirmed by Sir John, and offering to prove the contrary.—They are still at a loss to find a Madame La Brun, appearing on the records to have keptan *hotel-garnie* in the year 1748; they admit the existence of a surgeon, whose name was somewhat similar to La Marre, but they insist that he was called Lewis Pierre de La Mart.

A very elaborate memorial was composed by Monsieur Doutremont, ^{Append. p. 55.} one of the council for the pursuers, upon the plainte and additional plainte. In this memorial he takes notice of the article 12th July, in the police record, as fixing Lady Jane in Godfroi's hotel of that date. He founds also on the *livre de depense* of Godfroi; and from these written evidences, viz. the *livre de logeur* of Michelle, the *livre de depense* of Godfroi, and the article in the police record, together with the parole testimonies of the Michelle family, and of Godfroi and his wife, he lays it down as clearly proved, that Sir John, Lady Jane, and Mrs. Hewit, left Godfroi's upon the 8th July, entered to Michelle's that day, disappeared from Michelle's *for some days*, under pretence of going for a child which they had at nurse. "Where were they, says he, during this absence from the hotel d'Anjou? They were at Godfroi's at the hotel de Chalons, and it was agreeable to the plan of their intrigue to have *two different places of dwelling, and two different names.*—At the hotel de Chalons they contrived and prepared the crime; at the hotel d'Anjou they compleated it, by producing the child. This is a solution of the mystery. *Voilà tout le dénouement.*"

On the 20th January 1763, Mr. Stuart writes to Mr. Baron Muir as follows: "It is a peculiar happiness in the nature of our evidence in this case, that it does not rest so much upon the memory and testimony of witnesses, as *upon registers and unerring circumstances of proof*, and upon the deficiencies and contradictions of their own proof, which, joined with Sir John's answers to the queries, afford conviction."

Godfroi, though at first ignorant and forgetful of the whole affair, had contrived it so as to make his memory quadrate with the important discoveries, and with the evidence appearing from these unerring registers. Whether he was examined on the first plainte, in consequence of his citation on the 18th December, while he was in a state of forgetfulness, the memorialist has no access to know, but from the papers produced, it is certain, that he was examined on the 10th January, upon the plainte, and additional plainte, and that the pursuers knew, and were satisfied with his deposition. An *exposé des faits*, or memorial, was composed by Monsieur d'Anjou, an agent for the pursuers in France, setting forth, among other things, "That Sir John, Lady Jane, and Mrs. Hewit remained in Godfroi's from the 4th to the 8th of July, without seeing any person; that upon the 8th they paid their bill, a fact which is proved by the *livre de depense*, and, likewise, by the *deposition of Godfroi*; (i. e. by his deposition in the Tournelle.) Upon that same day, Mr. Stewart, *as he could not place the intended delivery of Lady Jane at Godfroi's, because Godfroi was too well known at Reims,*

“ where the pregnancy had been announced, and where the false delivery
 “ would have been easily discovered, took the resolution of quitting that
 “ hotel. He accordingly went to the hotel d’Anjou, rue Serpente,
 “ where he presented himself under the false name of Flurat, a Scotsman,
 “ under which name he is entered in the register of Michelle. This re-
 “ gister, deposited with the clerk of the parliament, forms an uncon-
 “ testible proof of the fact, &c.” In another part, after mentioning
 the *depositions* of the Michelle family, i. e. their depositions in the
 Tournelle, with regard to the journey pretended to be made to the
 country for a child, he says, “ during this absence we find them all
 “ three at Godfroi’s in the hotel de Chalons where Lady Jane, her
 “ husband, and Mrs. Hewit remained shut up and seeing no person,
 “ from the 9th to the 14th July, their daily expence being inscribed
 “ in Godfroi’s accompt-book; the articles in which agree with the
 “ number of days they passed there; a certain fixed sum being char-
 “ ged for the entertainment of each person, and the *deposition of God-*
 “ *froi, is exactly conform thereto.* But what puts this beyond the pos-
 “ sibility of a doubt * is, the publick record of police of the city of Pa-
 “ ris, in which these persons are inscribed, as having been declared
 “ by Godfroi, and found in his house at that very time by the inspec-
 “ teur de police.”

Your Lordships will observe, That Monsieur d’Anjou does not argue
 very consistently when he supposes that Sir John Stewart would never
 place the scene of the pretended delivery at Godfroi’s, a house so
 much frequented by the inhabitants of Reims, and at the same time,
 that *he did place it there*, by returning, and being found in that house,
 at the very time when Lady Jane should have been in child-bed.
 However, such was the hypothesis then adopted by the pursuers, in
 order to reconcile two *unerring* pieces of evidence, the *livre de logeur* of
 Michelle, and the police record.—It will be observed too, That Monsieur
 d’Anjou appears to have been very well acquainted with the deposi-
 tions in the Tournelle, though an ignorance in that particular has been
 since affected in the proceedings before your Lordships. Godfroi had
 been examined on the plainte and first additional plainte. His deposi-
 tion, it would seem, was agreeable to the views which the pursuers
 then had of their cause, and so Monsieur d’Anjou says in his memorial.
 But Madame Godfroi’s memory had not yet been refreshed, for it appears
 from another work, composed by Monsieur d’Anjou, entitled, *Extrait*
de la procedure extraordinaire, that when examined at the same time
 with her husband, on the plainte and additional plainte, she had given
 merely

* Ce qui acheve d’y mettre le sceau le plus autentique de la vérité.

merely a negative deposition; that no delivery had happened in her house, and that she remembered † nothing about these persons. Monsieur d'Anjou in the same *Extrait*, subjoins a pretty curious remark upon the deposition of the nurse Mangin, who had also been examined in the Tournelle. "She has given a bad deposition, says he, upon the " age of the child and the miscarriage *."

A second additional plainte was given in by the pursuers, of date 26th March 1763, relative to three points, viz. The re-baptism of Sholto in England, which they denied, and offered to redargue by evidence.—The letters of la Marre, which they said were wrote by Clinton.—And the enquiry made by Principal Gordon in 1756, in consequence of Sir John's note to Mrs. Napier, which had then come to their knowledge.—A third additional plainte, bearing date 20th May, 1763, begins with a long detail of their former arguments, mentions their having *purposely dropt* a man-servant, who had travelled with them from Aix-la-Chapelle to Liege; insists, that by comparing the books of Godfroi and Michelle, there is a *physical impossibility* of Lady Jane's having been delivered upon the 10th of July; and resumes the *story of Lewis Pierre de la Mart*, and some others, formerly mentioned.

The last plainte, dated 28th June 1763, is occupied chiefly with the account of the enlèvement of a child from one Sanry in 1749, and it concludes with hinting, that a monitoire would be agreeable, which was accordingly obtained.

From this detail of Mr. Stuart's discoveries, and of his proceedings in France, your Lordships will perceive upon what ground the *Tournelle* action was raised and insisted in, and what was the nature of those clear proofs, on which the present action was commenced.—The *livre des logeurs* of Michelle, and the concurring testimonies of him and his family, swearing to the exactness of their book, and to their remembrance of the facts related by them, were considered as infallible evidence of the residence of Lady Jane Douglas in that house, on the pretended day of delivery: and it was on this *alibi* in the house of Michelle, that both the Tournelle process, and the action before your Lordships were raised. At an after period, the scene of the *alibi* was shifted from Michelle's to Godfroi's, upon occasion of Godfroi's surprising remembrance, and of the new discovery then made of the article in the police record dated 12th July. This new piece of evidence was reckoned equally unerring with the former, and the French council fell upon an easy method of reconciling the two *alibi's*, by supposing

† A déposé comme l'addition de plainte sur le fait négative de tout accouchement seulement dans sa maison, car elle ne s'est pas rapellé les personnes.

* Elle a mal déposé sur l'âge de l'enfant et la fausse couche.

supposing that they went from Godfroi's to Michelle's on the 8th, from Michelle's to Godfroi's again on the 9th, and from Godfroi's once more to Michelle's on the 14th. This ingenious hypothesis, however, was kept a profound secret. It was set forth only in their private memorials, and in the plaintes, which were equally private; and the defender was kept in the dark with regard to this capital point of the cause, whether he was to defend himself against an alibi in Michelle's, or an alibi in Godfroi's, or in what manner he was to combat this seeming contradictory evidence. In June 1763, a special condescendence of the facts offered to be proved was, in obedience to an order, given in to your Lordships: but even here the pursuers contrived it so, as to give no manner of light to the defender.—Articles 14th,

—p. 7, K. 15th and 16th, are in these words: “ That Sir John, Lady Jane, and “ Mrs. Hewit, arrived at Paris on the evening of the 4th July 1748, “ N. S. being six days before the pretended delivery: that, upon their ar- “ rival, they stopt at the house of Monsieur Godfroi, called *l'hôtel de “ Chalons*, in the rue St. Martin, where the stage-coach of Reims usu- “ ally puts up: that some time after, they removed from Godfroi's to “ the house of Monsieur and Madame Michelle, called *le petit hôtel “ d'Anjou*, in the rue Serpente, Fauxbourg St. Germain, in which there “ was then a girl whose name was Marie. And whereas the defender “ endeavoured to prove, in his service before the inquest, that Lady “ Jane was delivered of him and of his pretended twin-brother Sholto-Thomas, at the house of Madame Le Brun, Fauxbourg St. Ger- “ main, and that she remained in child-bed in that house for nine or “ ten days after her delivery; the pursuer offers, on the contrary, to “ prove, that Sir John, Lady Jane and Mrs. Hewit, did not lodge at “ the house of Madame Le Brun, Fauxbourg St. Germain, in the “ Month of July 1748, N. S. *but that they were at the house of Mon- “ sieur Godfroi and at the house of Monsieur Michelle at times, and during “ periods, inconsistent with the possibility of Lady Jane's having been deli- “ vered at the house of Madame Le Brun, upon the 10th July 1748, N. “ S. or of her having remained in child-bed for nine or ten days af- “ ter such delivery; and that, during that period, there was not, either “ at the house of Monsieur Godfroi, or at the house of Monsieur Mi- “ chelle, any delivery, any indisposition, or any appearance of a wo- “ man with child, or of one recently delivered.*”

Def. pr. 727

In the monitoire, published on the 9th July that year, the same mystery was kept up. It is there said, That the gentleman and lady, &c. arrived at Paris on the 4th July 1748, and put up at the hotel de Chalons, rue St. Martin, where they remained obscurely *from the said day to the 14th* of that month inclusive, during which interval, they took, on the 8th of the said month, another lodging, under a disguised

disguised name, at the hotel d'Anjou, rue Serpente, and lived there mysteriously, *from their entry, to the end of the said month*, when they left Paris.—And, in another part, it is said, That they changed their names, and had a *double place of residence* *.

In the pleading upon the relevancy, the *livre de depense* of Godfroi, was but little, if at all, founded on by the pursuers.—The agent for the defender had got a copy of that part of the book which contained the account furnished to some anonymous company in the month of July 1748; and his council informed your Lordships, that, from this copy, the articles appeared to be blank in the name; that there was not the least reason for applying them to Sir John Stewart and Lady Jane, more than to any other company, and that they were likewise entirely irreconcilable with the entry to Michelle's, even for one night, on the 8th July, for that the persons to whom this blank account applied, appeared to have supped at Godfroi's upon the 8th. The answer made by one of the council who spoke for the pursuers was, that they might have left Godfroi's on the 8th, after supper, gone to Michelle's that night, and returned to Godfroi's next morning, but, *that the matter did not rest there*, for, by the record of police it was ascertained, that, on the 12th, Sir John and Lady Jane were actually lodged at Godfroi's, and it was no less certainly ascertained, that they had entered to lodge at Michelle's on the 8th, and therefore it was proved by infallible written evidences, viz. Michelle's *livre de logeur*, and the record of police, that Lady Jane was in one or other of these houses, and could not be delivered in the house of Le Brun upon the 10th.

In this shape the cause went to proof, and what the defender's agents understood to be chiefly incumbent on them, with regard to this capital branch of the cause, was, on the one hand, to show that the record of police was no sufficient proof of an actual residence in Godfroi's on the 12th; and, on the other hand, to remove the seeming evidence of an entry to Michelle's on the 8th, arising from his *livre de logeur*; accordingly, after much investigation, and with the assistance of an officer of police, who was so obliging as to become their friend, their labours were so successful in both of these articles, that they are both now given up and abandoned by the pursuers.

The article of the 12th July in the record of police, they discovered to be no evidence whatever of an actual residence in the hotel de Châlons of that date.—Every keeper of an hotel in Paris is obliged to have two different books for the police, one called the *livre des logeurs*, or *de l'inspecteur*, for the inspector of police, the other called the *livre du commissaire*, for the use of the commissary of the quarter. In each of these books the name, country, and designation of every person who comes to lodge in the hotel, ought to be inscribed, together with the

* Un double demeure.

date of his entry, and the date of his departure.—The inspector is directed, by the laws of police, to call at the different hotels within his district, and take a note of these names, &c. from the *livre des logeurs*, which he reports to the police, where a record is kept, agreeable to the notes taken by the inspector. These police-books are so far irregularly kept, that the date of departure is seldom or never marked; and very often the landlord, or his wife, or servants, who have the charge of these books, omit altogether inserting the names of those who come to the hotel; so that the books themselves, and consequently the record of police, which is taken from them, are exceedingly imperfect. Regularly too, the inspector ought to visit the hotels, and make his reports, once *every day*, to the office of police, and, for the most part, they are pretty exact in complying with this part of their duty. Sometimes, however, they are not so punctual; and it appears that the inspector who had the charge of that district in which Godfroi's is situated, in the year 1748, was somewhat neglectful in this particular, and made his visits only once in three or four days. In all such cases, where the report is not made day by day to the office of police, it is impossible to discover from the record the date of any person's entry, or actual residence in an hotel, because the only date appearing on the record is the date of the inspector's report.

The *livre du commissaire* is carried, in the beginning of each month, by the hotel-keeper, to the commissary of the quarter, who makes a transcript from it, which he also delivers in to the office of police, and it is there kept as a check upon the reports of the inspector.

Godfroi's *livre du commissaire*, for the year 1748, does not now exist; but, upon looking into his *livre de l'inspecteur*, it appears that there is an article in it in these words, 7th of July 1748: "Monf. Stuard, gentil-homme Ecoffois, et Mad. son épouse;" which article the memorialist has no occasion to dispute, because it is admitted that Mr. Stewart, Lady Jane, and Mrs. Hewit, came to Godfroi's on the 4th July; and all that can be inferred from the article is, that Godfroi omitted to inscribe these persons in his book on the 4th, as he ought to have done, and only entered them on the 7th, and even then made no mention of Mrs. Hewit.

It appears that the inspector had visited Godfroi's hotel on the 6th July, and marked his book; and he did not again visit it till the 11th, when he marked it of that date, and took a note of the above article, concerning Mr. Stewart and his lady, which he carried to the general record of police on the 12th; and so Mr. Stewart's name stands entered in the record of police, of date the 12th July, though regularly he ought to have been there of date the 5th July, had Godfroi done his duty, by entering his name in the book immediately upon his arrival,
and

and had the inspector also done his duty, by visiting the hotel every day, and reporting immediately to the police. This article, therefore, of the 12th July, in the police-record, which was once considered as an infallible proof of Lady Jane's having been in the hotel de Chalons upon the 12th July, proves no more than this, that the inspector, at his last visit to that hotel, prior to the report, had found an article concerning Mr. Stewart in Godfroi's *livre de logeur*, and, when the book itself is looked into, the article appears *there* of date the 7th, and ought regularly to have been of date the 4th.

In the next place, with regard to Michelle and his *livre de logeur*, which bears the entry of *Fluratl, Ecoffois, et sa famille*, on the 8th July, the memorialist did, on enquiry, discover, that this date was also liable to a great variety of objections. In the *first* place, it was somewhat remarkable, that though the *livre du commissaire* of this hotel for the year 1748, was still extant, as well as the *livre de logeur*, and though the one book ought regularly to have contained the precise same articles with the other, yet the article in question concerning Fluratl, was not to be found in the *livre du commissaire*.

2dly, What was still more material, no such article could be found in the general record of police, though articles, prior and subsequent thereto, were in that record; and, indeed, every article of the *livre de l'inspecteur*, falls of course to be transcribed into that record.

3dly, This article in the *livre de logeur*, appeared to be inserted *posterior* to an article of the 12th July, which could not possibly have been the case, had it been wrote of a date prior to the 12th; for the articles in this book are wrote uniformly, one after another, according to the order of time; and it is impossible to suppose, that an article of the 12th could have stood prior to this article of the 8th, if the 8th had been a true date. It was plain, therefore, that the 8th was a false date. The people of the house could not, from memory alone, pretend to support it at the distance of so many years; and as it appeared to be of the hand-writing of their servant, who was said to be a drunkard, it was probable she had committed a blunder in affixing the date.

These objections to the authenticity of this article, appeared in so strong a light, that the defender's agents in France, who had no opportunity of seeing the book with their own eyes, because it was locked up in the *Tournelle*, did very naturally give credit to a piece of information which was brought them, that the article was crowded in between two lines, and had the appearance of being a recent forgery. They have since had an opportunity of seeing the book itself, and they observe, that the *year* only is interlined, and that the rest of the article has no remarkable appearance of crowding; but, from the reasons which

which have been stated, the date of it must still be erroneous, and even in some degree suspicious.

4thly, A remarkable circumstance appeared, from a jotting in Lady Jane's pocket-book, which in some measure fixed the time of her removal to Michelle's, viz. an article in the hand-writing of Sir John Stewart, in these words: "Commencé avec le traiteur Samedi 20 "Juillet." The meaning of which was explained by the Michelle family, and other witnesses, to have been, that as the hotel d'Anjou was only a lodging-house, and did not furnish entertainment, they were obliged to get their victuals from one *Duchenois*, a *traiteur* or cook in the neighbourhood, and with whom, it would seem from this article, they began on the 20th July. It cannot be supposed, that Sir John, in this private jotting in the pocket-book, could have any intention to disguise the real date of his commencement with the *traiteur*, according to which he was afterwards to account with him; and therefore, it may be fairly presumed, that they arrived in Michelle's either of that date, or perhaps the evening before.

5thly, From a variety of circumstances deposed to by the Michelle family, it appeared plain, that Sir John and his company came to the house about the 20th, and no sooner. The account given of their transactions at that house, viz. the bringing the child; the dismissing the bad nurse, and getting the nurse Favre, Madame Blainville's departure to the service of Madame Goury, &c. seemed at most to carry them back only to the 19th or 20th.

The proof, therefore, upon the whole, was convincing, that this article in the *livre de logeur* of Michelle, supposing it to have been a true article, and not an *ex post facto* operation, was erroneous in the date. Neither was there any ground for supposing, that this might have been the date on which Sir John Stewart hired the rooms, though he did not enter to them till after his supposed departure from Godfroi's on the 14th.—The whole family of Michelle were positive, that the strangers came either the same day on which the rooms were taken, or, at furthest, the day after.—Madame Michelle has deposed, Parf. pr. 848, D. "That the article was wrote in the book in her presence, the same day on which the gentleman entered to the house." Her husband 858, D. says, "The room was taken in the morning, and the gentleman and 865, A. two ladies came towards the evening." Madame Blainville says, "They came that night, or the night after."

With regard to the supposed disguise of the name, a circumstance, no less taken hold of than the date, it appeared equally clear, that this must have been a mere unintended mistake of the servant-maid, from her being unacquainted with the foreign name of *Stewart*. Upon looking into the record of police, thousands of instances occur of much greater

greater blunders, committed by the hotel-keepers, in spelling English names. A specimen of some of them will be found in an extract in ^{Def. pr.} process, from the record for the month of July 1748, containing the ^{1037.} following among other names. Madam Umtelle, an English woman.—Balhuret, aid-de-camp to General Clais, an English man.—Macaumont, an English taylor.—Benjamin Bossoles, a Scotch gentleman.—Mi Lady Philcomell, and her son, from England, &c.

It appears, that in the house of Mr. Hibert at Reims, where there could be no disguise or concealment intended, Sir John was entered in their books under the name of *Eftuar*, and some of the French witnesses, in mentioning the name of Stewart, make it *Eftayard*, so that ^{Purf. pr. 157;} Fluratl, appears to have been nothing more, than the French servant girl's manner of spelling *Stewart*; and indeed it is incredible, that ^{B.} Sir John would have mentioned himself to be a *Scotsman*, if he had intended any disguise.

The memorialist having thus recovered evidence, the most convincing and ample, for redarguing those two capital proofs of the alibi; and not having the least apprehension, that the weight of this great cause was finally to be laid on the blank articles of *Godfroi's livre de depense*, his agents in France thought it unnecessary to bestow much time or labour in the refutation of so contemptible a proof. Godfroi and his wife were for the first time examined in this cause, at the instance of the pursuers, on the 3d May 1765, when they produced their *livre des logeurs*, containing the article above mentioned, of Mr. Stewart, a Scotsman, and his lady, of date 7th July 1748, which date, Mrs. Godfroi said, was of her hand-writing, but she could not ^{831, D.} affirm it to be exact, as it sometimes happened, that she did not set down the names of her lodgers for some days after their entry. She further deponed, that besides the books for the police, "The deponent ^{831, H.} kept a particular book of the daily expences relative to the persons " who lodged in her house, the dates of which book were exact, because the deponent's interest required it; that this register, however, " for the year 1748, was not in her possession, having been deposited " in the Tournelle of the parliament." She acknowledged, that when ^{835, D.} examined by commissioners from the Tournelle, she had forgot the name of Mr. Stewart, which name was not wrote in her *livre de depense*, but affirmed, that having since found her *livre de l'inspecteur*, in which the said name was wrote with her own hand, she *recollected perfectly*, that these (i. e. Mr. Stewart and two ladies) were the persons who lodged with her in July 1748. This recollection was somewhat singular, as the *livre de l'inspecteur*, contains only a gentleman and one lady, and points out not one circumstance concerning them. However, Mrs. Godfroi's deposition, founded entirely on her *livre de l'inspecteur*,

specteur, and the recollection occasioned by it, was as follows:—de-
 Purf. pr. 832 C. pones, “ That in 1748, in summer, the said Mr. Stewart came to the
 “ deponent’s house, accompanied by two ladies, although there is on-
 “ ly one mentioned in the said register *de l’inspecteur*, because frequent-
 “ ly the deponent does not write down in the said book chamber-
 “ maids nor servants; that the deponent does not recollect the figure
 “ of these three persons, if it be not that she believes very confusedly,
 “ that the gentleman was tall and dressed in red. Adds, that it is
 “ not surprising, that she has not preserved the remembrance of them
 “ after so many years, because, when her guests arrive, the deponent
 “ only causes conduct them to their apartments by a servant: That
 “ the deponent does not go into these apartments herself, unless they
 “ be indisposed: That she does not remember to have entered the a-
 “ partment of these three persons. Depones, that she knows, that
 “ when English gentlemen or ladies come to lodge in her house, it is
 “ generally for a very few days, and until they find a lodging somewhere
 “ else: That this was their practice at that time, as it also is at present,
 “ and it is for that reason, that the deponent observes these strangers less
 “ than others.” She next depones *negative* as to her acquaintance with any
 833, A. La Marre or La Brun, and proceeds as follows: “ That the deponent did
 “ not know where these persons went to lodge when they left her house.
 “ Depones, that after leaving her house, these two ladies did never re-
 “ turn to it, but that the gentleman returned to lodge in the depo-
 “ nent’s hotel in the month of August 1748, according as the same is
 “ inserted in the deponent’s book of expence, deposited at the office of
 “ the Tournelle, although he is not marked in the *livre de l’inspecteur*,
 “ exhibited by the deponent. Depones, That the second time that
 “ the said gentleman came to lodge in the deponent’s hotel in the
 “ month of August 1748, the deponent spoke to him, as she is in use to
 “ do to those who came to lodge in her house, to salute them at com-
 “ ing in, and at going out. Depones, That the gentleman did not tell
 “ the deponent that his wife was delivered, after she had left the depo-
 “ nent’s hotel. Depones, That since the said gentleman went from
 “ the said hotel in the month of August 1748, the deponent has never
 “ again seen him nor these ladies.—Interrogated for the defender, de-
 “ pones, That she does not remember to have spoke to these ladies.
 “ Depones, that her hotel was then, as it is at present, very much
 “ frequented, in so much, that in order to be sure of a lodging in
 “ her house, it was often necessary, and is so at present, to write be-
 “ fore-hand to engage it, but this does not hinder, that people some-
 “ times find lodging there, without having pre-engaged it. Depones,
 “ That in the said year, 1748, there came sometimes, as there do at
 “ present, to the deponent’s house, English or other strangers. De-
 “ pones,

" pones. That it was then, and is at present, the deponent who was
 " and who is charged with the care of the household affairs within
 " doors ; and that her husband is chiefly occupied in affairs abroad,
 " as the receiving of rents and executing commissions of trust ; and
 " that he was at that time, and still is, the agent of the city of
 " Reims. Depones, That there were then in the deponent's hotel fif-
 " teen rooms to let, four of which had two beds, independent of
 " lodging for servants, and that at present, by an addition which has
 " been made to the house, she has ten additional rooms, and as many
 " closets. Depones, That she does not remember particularly, if
 " when the gentleman and the two ladies came to lodge in her house,
 " all the rooms in her hotel were occupied, but that commonly all
 " her rooms are full from the beginning of the year to the end of it ;
 " and sometimes she cannot receive all those who offer. Depones,
 " That the names of the persons who come to lodge in her house, are
 " usually set down in her book of expence, at the article of expence
 " which is relative to them ; but that it sometimes happens, that she
 " puts only Monsieur or Madame, without adding the name at the
 " head of the articles of expence relative to those persons, so that there
 " is no person who comes to lodge and to lie in the deponent's house,
 " and who have made any expence there, the articles of whom are
 " not carried upon her book of expence, either with the designation
 " of the name, or with the general designation of Monsieur, without
 " a name, but that a person who is in use to come to lodge in the
 " deponent's house, and who may have slept there a single night with-
 " out being at any other expence than that of lodging all night, may
 " happen not to be marked down, neither in the one way nor in the
 " other. Depones, That it was, and that it is the deponent who keeps
 " the book of expence, unless she be sick or indisposed, in which case
 " it is her husband or her children who keep it. Depones, that she
 " cannot recollect, if in the year 1748, there came to lodge in the
 " deponent's house, any other ladies than these abovementioned, be-
 " cause it is so long ago, but that, in general, there come very few la-
 " dies to her hotel to lodge there. Depones, that she does not re-
 " member if Mr. Stewart and these two ladies went out often, or
 " even if they did go abroad at all, during the time they staid in her
 " house. Depones, that in 1748, the deponent had three servants,
 " viz. A maid-servant called Louison who is dead, and two men-ser-
 " vants, named Feutieres, she does not know whether they are dead
 " or alive. Depones, that the regulation of her house in 1748, was,
 " that the guests paid three livres a-head per day for lodging and en-
 " tertainment, whether they eat or not, independent of wood, of ex-
 " traordinary wine, of breakfasts, or other expences ; and that at
 " that

“ that time, the persons who came habitually to lodge in her house,
 “ if they did only lie there one night in passing, whether they supped or
 “ not, paid thirty sols; that, at the same time, the persons who chose
 “ to eat in their own apartments, if they were not satisfied with the
 “ ordinary, gave notice thereof, but that generally, they were all sa-
 “ tisfied with it; and that the price of the ordinary was the same,
 “ whether people eat in their own apartments, or at the table de
 “ hôte; that if any one chose to eat at a higher price, he was
 “ served at what price he pleased. Depones, that in 1748, the
 “ deponent's hotel was much frequented with people of Reims,
 “ and more than at present. Depones, that she does not remember,
 “ how many rooms Mr. Stewart and the two ladies occupied, but
 “ that so far as she can recollect, the two ladies were lodged
 “ in a room with two beds above the remise: That when the
 “ gentleman and the two ladies were together, they did not eat at the
 “ table de hôte, but that Mr. Stewart, when he came back in the
 “ month of August, may have eat at that table. Depones, That the
 “ deponent did not see either of the two ladies indisposed, nor hear
 “ that they had been so, while they staid at her house. Depones,
 “ That no body ever complained of bugs in the rooms over the remise
 “ abovementioned. Depones, That the deponent was paid at the
 “ time, the expence which was made by that gentleman and the two
 “ ladies; but she does not remember if it was the gentleman or one of
 “ the ladies who paid her; does not remember if they had any servant
 “ of their own, nor by whom they were served, but that, if they had
 “ a servant, it will appear by the deponent's book of expence. De-
 “ pones, That the deponent being indisposed, she was examined by a
 “ counsellor, a commissioner of the parliament, who came to her
 “ house: That, upon a plainte being read to her, she deponed what
 “ she then remembered: That at the time of that deposition, she did
 “ not remember the name of Mr. Stewart, which name was not wrote
 “ in her book of expence, at the epoch of the month of July 1748;
 “ but that having, since then, found her book *de l'inspecteur*, which
 “ she has now exhibited, on which the name is wrote with the depo-
 “ nent's own hand, in the said month of July 1748, she recollects per-
 “ fectly, that these are the persons who lodged in her house in the said
 “ month of July 1748.

This deposition, though given by Madame Godfroi herself, the per-
 son who managed the affairs of the hotel, kept the books, and knew
 much more about the affair than her husband, who was generally
 employed without doors, seemed very little to the purpose. Her me-
 mory, indeed, had been remarkably refreshed from the time of the first
 enquiries concerning this affair, when she did not recollect any one
 circumstance.

circumstance whatever, and could not even say whether such persons had lodged in her house or not.—The pretence for the recollection was, the finding out her *livre de logeur*, containing the name of Mr. Stewart et sa femme, of date the 7th July; this led her, no doubt, to conjecture, that Mr. Stewart and his lady had been in the hotel at that time; and this conjecture was soon converted into a perfect remembrance, that Mr. Stewart and two ladies had lodged with her: but still she says nothing of the time of their continuance in the hotel, nor makes any application of the blank articles in her *livre de depense*, to these persons, nor indeed was the book in her possession, the same having been produced in the Tournelle, from which, in all probability, it never could be recovered.

Godfroi, the husband, went indeed a step further at this examination, and mentioned the *livre de depense*, as well as the *livre de l'inspecteur*, as applying to these strangers, whom he pretends to remember very distinctly, though he must have known much less about them at the time than his wife.—Depones, “ That he kept a register Purf. pr. 828.
 “ or book of expence, in which was wrote down the expence made by A.
 “ those who lodged in his house; which book served as the rule for
 “ making out the accounts of what they owed the deponent for enter-
 “ tainment, lodging, and other expences: That the deponent has not,
 “ at present, in his possession, that book of expence, containing the
 “ articles of the year 1748: That it is deposited in the Tournelle.
 “ Depones, That the deponent remembers, that there came to his
 “ house in summer 1748, a gentleman who was a stranger, who told
 “ the deponent, that his name was Mr. Stewart, and two stranger la-
 “ dies with him: That the gentleman told the deponent that he was
 “ from Scotland.”—And after deponing negative as to any delivery in
 his house, or his knowledge of any La Brun, &c. he proceeds in this
 manner:—“ That he did only see these ladies very imperfectly, as
 “ he never went up into their apartment; and that, through the
 “ course of the day, his affairs called him often abroad. Depones,
 “ That the deponent did not know nor hear that either of these
 “ two ladies was indisposed while they were at his house. De-
 “ pones, That he believes that there were, at that time, a great many
 “ people lodged in his house, because he gave to these strangers a
 “ lodging only in the second story over that which is at present the
 “ remise (or coach-house) of his hotel. Depones, that in general, the
 “ deponent's hotel always has been very much frequented, and is so still;
 “ but that the English came there, and do come, but seldom, and stay
 “ little time, excepting people of trade, the quarter in which the de-
 “ ponent's hotel is situated being the quarter of commerce. Depones,
 “ that it was, and still is, the deponent's wife, who managed, and
 “ does

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“ does manage, the affairs within doors in his house, while the depo-
 “ nent has always been more generally occupied with affairs abroad.
 “ That it was the deponent’s wife who always kept the book of ex-
 “ pence: that the deponent did not meddle with it, except when his
 “ wife was indisposed or absent: that he does not believe that his wife
 “ was absent nor sick during the time that these three strangers were
 “ in his house, because he believes that the articles of their expence
 “ are wrote by her in the book of expence deposited in the Tournelle.
 “ Depones, that there came at that time, sometimes, but seldom, la-
 “ dies to lodge in his hotel, which has been always more frequent-
 “ ed by men than by women.—The deponent does not remember
 “ that, in summer 1748, there were any other ladies lodged in his
 “ house, except the two above mentioned—adds, that if there were
 “ any, it will appear by the *livre de l’inspecteur*. Depones, that Mr.
 “ Stewart and these two ladies occupied two rooms in the deponent’s
 “ house, one with two beds, which is the second above the *remise*,
 “ and another opposite, with one bed. Depones, that he had two
 “ servants in the year 1748, one of whom, called Louison, is dead,
 “ and the other a man-servant, whose name, he believes, was Borin,
 “ also dead: that the deponent is not certain, if it was this Borin
 “ who was the servant of his hotel at that time, only knows that he
 “ was his servant, and that he is dead: that, besides these two ser-
 “ vants, he had Savoyards, or people who went errands, to execute
 “ the commissions, but who were neither lodged, nor did eat in the
 “ house. Depones, that he does not remember, but believes, without
 “ being able to affirm it, that Mr. Stewart was dressed in red when
 “ he came to the deponent’s house the first time; for the second
 “ time, the deponent does not at all remember how he was dressed.
 “ Depones, that it was to the deponent’s wife that these strangers paid
 “ their expence. Depones, that, at Mr. Stewart’s second journey, he
 “ does not remember that any person came to see the said Mr. Stewart.
 “ Depones, that he never said to any body, that Mr. Stewart, at his
 “ second journey, had told the deponent that his wife was delivered;
 “ and that in fact Mr. Stewart did never tell the deponent so. De-
 “ pones, that generally the names of the persons who lodge at the de-
 “ ponent’s hotel, are put down in the *livre de l’inspecteur*, but that
 “ sometimes they are forgot, or are put down, of dates posterior to
 “ their entry; because often the names of the persons who arrive are
 “ not put down till the inspecteur makes his visit, and that he does
 “ not visit every day: that it does likewise happen sometimes, that
 “ they do not learn the names of the persons till some days after their
 “ entry.

" entry. Depones, that the deponent never knew nor learned to
 " what place of the Fauxbourg St. Germain Mr. Stewart and the
 " said two ladies went to lodge when they left the deponent's
 " house in the month of July 1748; the deponent only remembers
 " that they had hired a lodging, which was not ready, because they
 " wanted to cause clean it on account of bugs, as Mr. Stewart at that
 " time told the deponent. Depones, that what makes the deponent
 " recollect this circumstance is, that they had settled and paid their
 " expence in his hotel, intending to leave it; but as they could not
 " get into their new lodging, they remained some days longer in the
 " deponent's hotel, as will appear from his book of expence. De-
 " pones, that he never heard that Mr. Stewart and these ladies had had
 " two lodgings in Paris, after they quitted the deponent's hotel. De-
 " pones, that he does not remember, and has not any idea, that any
 " other persons in that year 1748, did pay their expence at two dif-
 " ferent times: that it may be so, or may not be; however it will ap-
 " pear from the deponent's book of expence."

This oath appeared equally insignificant, and the memorialist will show that it is false in many particulars; however, as the pursuers signified an intention of again examining Godfroi and his wife upon the *livre de depense*, in case it could be recovered from the Tournelle; and likewise Michelle and his wife, upon their *livre des logeurs*, which was in the same situation, the agent for the defender frequently applied to Mr. Stuart, desiring that if these books were at all to be communicated, or copies of them to be obtained, he ought to apply immediately for that purpose to the parliament, and deliver copies to those acting for the defender, that they might have time to make enquiries relative to what appeared in these books, before the act and commission should be at an end, such enquiries being proper on the part of the defender, though he was by no means to acknowledge any evidence arising from them, unless the originals themselves were recovered, and produced in process before your Lordships.—On the 23d May, when all the other proof was finished at Paris, and when they were about to proceed to the examinations at Dammartin, Reims, and other places, the agent for the defender renewed his request to Mr. Stuart in writing, signifying at the same time that Mr. Stuart, as one of the pursuers of the Tournelle action, had a right at all times to demand copies of the books and other writings, which he himself had caused to be produced in the Tournelle.—To this requisition no answer was made, and the proof went on at Reims and other places.

But your Lordships having, by your interlocutor, allowed a fur-^{Purs. pr. 604⁵}
 ther examination at Paris, in case it was desired by either party, con-^{H.}
 cerning books or papers shut up in the Tournelle," Mr. Stuart, on
 the 5th of July 1765, made intimation to Mr. Mackonochie, the a-
 gent.

gent for the defender, when at Brussels, " That the pursuers had obtained an arrêt of the parliament of Paris, for inspection in the hands of Mons. d'Anjou, of the books which had been hitherto locked up in the Tournelle-criminelle of the parliament of Paris ; and therefore he intimated to the said Alexander Mackonochie, that he intended to examine witnesses with respect to these books at Paris, and desired the said Alexander Mackonochie, agent, and the commissioners for the defender, to repair to Paris, in order to said examination."—To which intimation and request the said Alexander Mackonochie consented.

Purs. pr. 605, A. At Paris, the 12th July 1765, Mr. Stuart intimated to Alexander Mackonochie, " That, in consequence of the arrêt above mentioned, an opportunity might now be had of seeing the books in the Tournelle, which were to be transported to Mr. d'Anjou's, as soon as a proper proces verbal was made thereof ; but, previous thereto, desired the said Alexander Mackonochie to go to the Greffe, and inspect the same ;" which he agreed to, and accordingly the books were inspected.

Purs. pr. 605, E. On the 23d of the said month, Mr. Stuart represented, that the books having been for sundry days in Mr. d'Anjou's hands, the defender's doers had had sufficient time to see the same, and to take what copies thereof they thought proper ; and therefore desired they would consent to the examination of Mons. and Madame Michelle with respect thereto.— " Before proceeding to which, or to any other examination with respect to the said books, the said Alexander Mackonochie represented to Mr. Stuart, that though he had seen the books in Mr. d'Anjou's, and been allowed to take copies thereof, yet that was by no means sufficient to convey a proper idea of these books to the court of session ; that it is impossible, from copies, to point out properly the numberless irregularities therein contained ; and that, as it has been entirely owing to the pursuers, that these books cannot themselves be carried to Scotland, as well as others of the like nature, they have themselves to blame for any inconvenience they may be subjected to on that account ; and protested, that no deposition, with respect to these, or any other book kept in the Tournelle, shall be received or made part of this process, unless the book, to which the said depositions refer, be therewith transmitted to the court of session ; and, though the defender does not mean to oppose the examination of the witnesses altogether, or to refuse to take copies of such parts of said books as he shall think most material ; yet he hereby declares, that his doing so shall not be understood as any acquiescence in the arrêt of the parliament of Paris,—allowing only inspection thereof in the hands of Mr. d'Anjou, or that he thereby
" passes

" passes from any objection competent to the defender against the de-
 " positions of these witnesses being at all received, on account of said
 " books not being transmitted to the court of session, as well as others
 " in the like circumstances ; all which is hereby reserved."

Mr. Stewart having made an answer to this objection, importing, that the books themselves could not be obtained, and that the defender was at full liberty to take such copies as he had a mind, the commissioner agreed to the examination of Michelle and his wife, reserving the objections and answers to be determined by the court of session at advising.

Upon the 30th July, 1765, the commissioner was required to proceed to the examination of Godfroi and his wife, when the defender's agent repeated the above objection, and added, " That though the Purs. pr. 606
 " pursuers had, at all times, access to demand copies of these books
 " from the Tournelle ; and that the defender, before proceeding to the
 " examination of witnesses at Dammartin, Reims, &c. desired Mr.
 " Stuart to procure a copy of said books from the Tournelle, in order
 " that there might be time to enquire how far the same corresponded
 " with the oaths of Mr. and Madame Godfroi, then emitted ; to
 " which reasonable request the pursuers never made any answer, and
 " no copy was furnished to the defender till a few days ago, when he
 " had inspection thereof in the manner above mentioned ; whereby
 " the defender was not allowed time to make the necessary enquiries
 " with respect to people who lodged in this house, at and about the
 " time Sir John and Lady Jane is pretended to have lodged there."

An answer was made by Mr. Stuart, importing, that, as far back as the year 1764, he had proposed to the defender to make a joint application to the Tournelle for access to the said books, which was not agreed to : That though indeed the pursuers might have obtained copies of these books, at any time, from the Tournelle, it was against the laws of France to communicate these copies to the defender ; and that they did not incline to make any application to the parliament for communication or inspection of these books, when the proof was going on, lest they might thereby incur the displeasure of the parliament ; but that they had now obtained an arrêt for that purpose, and if the defender had not yet had sufficient time to take such excerpts or copies as he desired, " the pursuers were willing to delay concluding
 " the proof, until the defenders should have such time as they might
 " judge necessary for that purpose."

Replied for the defender, " That his council refused to join with the
 " pursuers in an application for the books, for very good reasons, and
 " which it is needless here to repeat: It was the pursuers business alone
 " to retire these books from the Tournelle, without the defender's aid,

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“ seeing they had put them there without his consent : It was further
 “ their indispensable duty to do so, as soon as possible, in order that
 “ the defender might have the same inspection thereof that he had had
 “ before they were put ; and he does insist, that the pursuers, having
 “ made their application for said books no earlier than the month of
 “ June last, was a great aggravation of the wrong they had committed
 “ in putting them there. Their delaying their application, on account
 “ that the parliament might stop the further execution of the com-
 “ mission, is a mere pretence. The parliament was not ignorant that
 “ the proof was going on, independent of their authority ; and
 “ there is not the least doubt but they would have granted the inspec-
 “ tion of the books as easily in November 1764, as in June 1765 ; in
 “ which case the defender would have had much more time than
 “ he now can have, to have made the necessary enquiries concern-
 “ ing these books. The requisition made in May for a copy of God-
 “ froi’s book, or at least of all the articles therein contained for the
 “ months of May, June, July, and August 1748, was reasonable, and
 “ what the pursuers ought immediately to have complied with : And
 “ though the defender’s agent only desired Mr. Stuart, in writing, to
 “ furnish said copy the 23d May, yet it is equally true, and the letter
 “ wrote on that occasion bears, that he had frequently before that,
 “ and since the first examination of Godfroi on the 3d May, men-
 “ tioned to Mr. Stuart the necessity and justice of his furnishing said
 “ copy to the defender, and thereby desired him to cause deliver said
 “ copy to Mr. Guillemin : And though it may probably be contrary
 “ to the laws of France, to communicate pieces produced in a crimi-
 “ nal process, to a defender, yet, as the pursuers, in this case, had a
 “ right to demand copies for themselves, they ought to have done so
 “ early, and communicated these to the defender, in order, as far as
 “ was in their power, to have repaired the injury he had received by
 “ said books being shut up unjustly, and by their fault : And there
 “ certainly was no risque of offending the parliament by such commu-
 “ nication, seeing they have allowed it themselves. For these reasons,
 “ and that the books are not to be transmitted to the court of session,
 “ and others to be mentioned, the defender insists, that the depositions
 “ to be taken ought not to be made any part of the proof in this
 “ cause.”

The whole other proof being concluded in France, the commission
 of your Lordships expired, and the defender’s council and agents ready
 to set out for this country ; and the evidence itself, which was ex-
 pected from this re-examination of Godfroi and his wife, and from
 the inspection of his *livre de depense*, appearing in its nature most in-
 conclusive, it was thought unnecessary to accept of the offer made by Mr.

Stuart,

Stuart, of remaining longer in France, in order to make enquiries over the whole kingdom, for the purpose of discovering all the different companies who had lodged at the hotel de Chalons in July 1748; or to collect other materials for refuting a tale, which in itself was incredible. The commissioner having therefore agreed to take the examination of Godfroï and his wife, *reserving all objections*, they were for the second time examined; and it appears that their memories were still more distinct in this second examination, than they had been in the first.

The *livre de depense* having been shown to Godfroï, he deponed, That the article concerning Mr. Stewart and the two stranger ladies, ^{Purf. pr. 837,} of whom he had spoke in his former deposition, was conceived in ^{E.} the following manner :

Juillet 1748, du Jeudy 4 Monsieur ——— font entrés à souper			
Deux bouteilles de Bourgogne,	.	.	1 10
5. Trois bouteilles de Bourgogne	.	.	1 16
6. Trois bouteilles de vin,	.	.	1 16
7. Deux bouteilles de vin	.	.	12 0
8. Monsieur a payé et recommencé le neuf à diner, hors une			
bouteille de Bourgogne, qui n'a point été compté le			
huit à soupée	.	.	1 4
9. Deux bouteilles de Bourgogne	.	.	0 12
10. Trois bouteilles de Bourgogne	.	.	1 16
11. Trois bouteilles de Bourgogne	.	.	1 16
12. Deux bouteilles de Bourgogne	.	.	0 12
13. Trois bouteilles de Bourgogne	.	.	1 16
Pour du beurre tous les jours	.	.	1 0
Un carreau de vitre	.	.	0 5
Cinq jours et demi	.	.	49 10
Extraordinaire du vin	.	.	0 6
			58 17

“ Depones, that the date of the month, of the year, and of the day, the
 “ word Monsieur, and the three first lines of the above account, are of
 “ the hand-writing of Madame Godfroï, the deponent's wife: that
 “ the two following articles, of the dates the 6th and the 7th, are of the
 “ hand-writing of the deponent: that the five following lines of the
 “ dates the 8th, 9th, and 10th, are of the hand-writing of the said
 “ Madame Godfroï: that the five following articles are of the writing
 “ of the deponent, and that the two last lines are of the writing of
 “ the said Madame Godfroï: that all the above mentioned accounts,
 “ which the deponent has pointed out in his book of expence, have
 “ been

“ been scored in the time as paid ; and that, by the manner in which
 “ Mr. Stewart’s said account appears to have been scored, there is rea-
 “ son to believe that it has been done at two different times, viz. the
 “ first time, when the first part of the account was settled and paid,
 “ and the second time, when the second part thereof was paid. De-
 “ pones, that it does not appear by the first part of the said account,
 “ concerning Mr. Stewart and these two ladies, what sum was paid
 “ the 8th of July for their expence, nor for what number of persons :
 “ that it only appears by the word *Monsieur* — *sont entrés*, that there
 “ were more than one person ; but that it appears clearly by the second
 “ part of said account ; and that the deponent does affirm, that this
 “ second part concerns the same persons as the former, and that these
 “ persons were three in number, which is proved by the last article, but
 “ one, of the account, bearing the sum of 49 livres 10 sols, for five
 “ days and a half, which sum, at the rate of 3 livres a-head, (the de-
 “ ponent’s ordinary price at the time) fixes the number of three per-
 “ sons. Depones, that it does not appear by the said account, that
 “ these persons had any servant with them : that, if they had had one,
 “ mention would be made of it in the said account, at the rate of 25
 “ sols a-day, the ordinary price of the house for a servant.”

It has been mentioned above, that Sir John Stewart, in a jaunt
 which he made from Dammartin to Paris in August 1748, lodged in
 the house of Godfroi ; and it would appear, that his name was then
 entered in the *livre de depense*, as Godfroi depones, “ That the ac-
 count which regards Mr. Stewart, at his return in the month of
 August following, is wrote by the deponent, and in the terms and
 form following :

Du Jeudy 8 Août 1748.

Monsieur Stewart est

entré à soupée

11.	Une demie bouteille de Burgogne				
	et une mulseaux	.	.	.	1 6
12.	Une bouteille vin blanc	.	.	.	0 3
	Quatre jours & demi	.	.	.	13 10

15 4

“ Depones, that it appears by this account of the 8th of August,
 “ that Mr. Stewart had not a servant with him. Depones, that he
 “ remembers perfectly well, that the said article of the 8th of August,
 “ bearing Mr. Stewart’s name at the head of it, concerns the same
 “ person, to whom the account of the 4th July preceeding, which is
 “ wrote on the opposite page, is relative. Being interrogate how it
 “ happens, that the name of Mr. Stewart has not been put at the head
 “ of

" of the account of the 4th of July, which relates to him? the depo-
 " nent answers, that Madame Godfroi, who wrote the entry, and
 " the beginning of the said account, not knowing the name at first,
 " had not wrote it down; and that, seeing that Mr. and Madam
 " Stewart were not to continue in the hotel, she had neglected to set
 " it down. Depones, that there are several other examples in his
 " household-book of accounts of persons whose name is not marked
 " there, and particularly an example in the same page, under the date
 " of 9th August 1748, beginning thus, *Monsieur est entré a sou-*
 " *per et mademoiselle sa soeur.* Depones, that besides the foresaid regi-
 " ster, deposited at the Tournelle, which the deponent has mentioned
 " above, he kept also another domestick book of expence, which he
 " exhibits, and which was current at the same time for the year 1748,
 " for the purpose of writing down in it the persons who did not lodge
 " in his house, but who only came to eat there, and also some parti-
 " cular persons who did lodge there, but at a price under the ordi-
 " nary rate, being the deponent's relations, friends, or other persons,
 " for whom the deponent had a particular consideration. Depones,
 " that this register, which the deponent does now exhibit, begins the
 " 8th October 1741, and ends the 20th March 1750: That the de-
 " ponent found this register only on Saturday last, and did commu-
 " nicate the same to both parties so soon as he found it. Depones,
 " that he did at the same time find another old register, which is the
 " continuation of that deposited in the Tournelle, which register be-
 " gins at the first page of the second leaf, by an article of 15th Oc-
 " tober 1748, and ends at the last page, under the date of 31st Au-
 " gust 1754; that on the second page of the first leaf of the said book,
 " there are two accounts, the first bearing for title Monsieur, but has
 " neither the month nor the year, but only on the margin, the dates
 " 28th, 29th, 30th, and 31st, and the second account of Saturday,
 " 31st August 1754, for Monsieur Beirgeois, from the 1st to the 4th
 " of September. Depones, that as there is neither date of the year,
 " nor name of the month in the foresaid first account, he cannot tell
 " to what year, nor to what month, nor to what person, the said ac-
 " count ought to be applied. Depones, that he did also communi-
 " cate to the two parties this book of expence, which contains the se-
 " quel of the preceeding book, deposited at the Tournelle; that the
 " deponent does now exhibit the same, and consents, at the desire of
 " the parties, that both this, and the other which he has mentioned
 " above, as current at the same time with that one deposited at the
 " Tournelle for the 1748, remain in process, as relative to his depo-
 " sition, upon condition, that they be afterwards returned to him;
 " and these two registers are signed by the deponent, and by the com-
 " missioners.

“ missioner. Depones, that the book deposited at the Tournelle, to-
 “ gether with that which is the sequel of it, and the one which was
 “ current at the same time, for the particular accounts of the depo-
 “ nent’s friends and relations, as above mentioned, are the only books,
 “ in which were wrote the expence of his guests, for the time which
 “ these books contained. Being interrogated how it happens, that in
 “ the deponent’s books of expence, the different accounts do not ap-
 “ pear to follow each other in the order of the dates, so that there
 “ are some accounts of anterior dates, which appear in the book after
 “ other accounts of dates posterior? He answers, that it arises from
 “ this, that when a guest arrives at the deponent’s house, the depo-
 “ nent opens a particular account for him, for the continua-
 “ tion of which account, he leaves the rest of the page blank,
 “ and when another person comes, the deponent begins an ac-
 “ count for him upon another page, and when the first account is
 “ paid, if there remains any blank between these two accounts, the
 “ deponent makes use of it to write down therein a third account,
 “ which, although posterior in date, will stand placed in the book,
 “ before the second accompt, which is of a date anterior; and in the
 “ same way, if there remains more of the blank, there may be seve-
 “ ral articles wrote down in it, in proportion to the shortness of the
 “ accounts.—Interrogated for the defender, depones, that it has of-
 “ ten happened from forgetfulness, that there are accounts in these
 “ books of expence, relative to persons whose names are not marked
 “ in the police-book, called the *Livre d’inspecteur*, especially for per-
 “ sons who stay but a little time, or the deponent’s relations, or people
 “ who are known and unsuspected, who are forgot to be marked
 “ down in the police-book. Depones, that there are also a great ma-
 “ ny accounts in the deponent’s book of expence where the names of
 “ the persons to whom these accounts are relative, are not marked
 “ down: Being interrogated if he can from memory fill up the names
 “ of the persons who are blank in the book of expence for the year
 “ 1748, or any of them? answers, that he cannot say whether or not,
 “ without having examined them, but that, perhaps, with the assist-
 “ ance of his *livre d’inspecteur*, he could point out some of them; and
 “ having first examined the said book of expence for the year 1748,
 “ relative to the accounts, where the names of the persons are not set
 “ down; depones, that he cannot tell who are the persons to whom
 “ these accounts relate, observing that the greatest part of these ac-
 “ counts relate to persons who made but a very short stay, and seve-
 “ ral of whom did stay only one day; and the deponent having there-
 “ after compared the said household book with the book of the *inspec-*
 “ *teur*, he finds that the blank for the account of Monday 6th May
 “ 1748,

" 1748, ought to be filled up with the name of Monsieur de Senne
 " Advocate at Arras, who stands upon the *livre de l'inspecteur* at the same
 " date, 6th May ; that there is an appearance that the account of 9th
 " August 1748, in these words, Monsieur entered
 " to supper, and Mademoiselle his sister ought to be filled up, with
 " the name of Monsieur Bancarell Merchant at Rowen, who stands u-
 " pon the *livre d'inspecteur*, on the 8th of the same month ; that for all
 " the other such accounts, which are to the number of fifteen, in the
 " course of the year 1748, in regard to which the names of the persons
 " are not found, neither in the book of expence, nor in the *livre d'in-*
 " *specteur*, the deponent cannot indicate any name, and believes it is
 " the short stay which they have made in his house, that has occasion-
 " ed their not being marked in the *livre d'inspecteur*. There being
 " shewn to the deponent, an account of 27th February 1747, which
 " begins Monsieur
 " *sont entrees a diner*, ending the 11th of March following. Depones,
 " that he cannot, from memory, tell what persons the said acccount re-
 " lates to ; and having examined his *livre de l'inspecteur*, he finds, un-
 " der the same date of 27th February 1747, the names following :
 " Jean Pierre Borrekens, merchant at Antwerp, and Monsieur Paul
 " Vandermier, Abbé at Antwerp ; from which the deponent concludes,
 " that the foresaid account relates to these persons. Depones, that he
 " is persuaded, that these books of expence contain the true date of the
 " entry of all the persons who came to lodge in the deponent's house,
 " without omission, because his own interest required it ; but that he
 " cannot answer but that some omission may have been committed to
 " his prejudice. Depones, that these books of expence contain an ar-
 " ticle or entry of all the persons who came to lodge in the deponent's
 " house ; but that for those that took nothing extraordinary, their ac-
 " counts consisted of one single article, specifying the number of the
 " days, and sometimes it happens that he reckoned with them from
 " memory, without marking upon the book at the article which related
 " to them, the number of the days, or the sum which they paid. And
 " the deponent being asked for the account of Monsieur Wright, mer-
 " chant in London, who is marked upon the *livre de l'inspecteur* of 12th
 " May 1748 ; declares, after having examined his books, that he finds
 " no account applicable to that gentleman, which may be owing to
 " this, that he has perhaps entered in the evening, and gone away
 " next day ; but the deponent does not at all remember that gentle-
 " man.—Being again asked to show the account of Monsieur de Lan-
 " tage, marked in his *livre de l'inspecteur* the 7th February 1748, and the
 " account of Monsieur Mahon, marked in the said book the 18th of
 " June said year ; declares, that neither can he find accounts which
 " relate

Purf. pr. 843,
C.

— H.

“ relate to them, in his books of expence, and believes that it is for
 “ the same reason above mentioned.—Being interrogated, Why, in se-
 “ veral accounts of these books of expence, the word *Monsieur*, which
 “ is at the head of the account, appears to be of the hand-writing of
 “ one person, and the proper name which follows the word *Monsieur*,
 “ appears to be wrote with another hand? he answers, that it is, be-
 “ cause, upon the entry of a person to his hotel, they begin by
 “ opening for him an account, sometimes without knowing his
 “ name; that afterwards, when they learn his name, the first
 “ who is informed of it, whether it be the deponent or his wife,
 “ does often add the name to the word *Monsieur*.—And there being
 “ shown to the deponent his register, bearing an article of 2d July
 “ 1748, in which is wrote, *Monsieur de Bizemont, colonel of infantry of*
 “ *Corbeille, and a man-servant*; and the deponent being asked, if he
 “ can tell how long time that gentleman staid in his hotel, he answers
 “ that he cannot tell; that he presumes he may have staid one day, or
 “ perhaps two or three; that he sees, by the article concerning him, that
 “ he has had nothing extraordinary, and that therefore his account
 “ must have been made up by word of mouth, according to the time
 “ that he staid—adds, that although he had not staid but one single
 “ day, he would still have been marked in the *livre de l'inspecteur*, on
 “ account of his being an officer, because the police requires from
 “ the inn-keepers more exactness in respect of the military than
 “ of all their other lodgers.—Further adds, that the deponent does
 “ not know this Monsieur de Bizemont, and has no remembrance
 “ of him.—Depones, that neither does he remember who the
 “ Monsieur Renald may be, who is marked, of the date 15th
 “ August 1748, in the deponent's book of expence, unless it was
 “ one Monf. Renard of Reims, who is dead, that it appears by the said
 “ book, that he staid seven days and a half in the deponent's house,
 “ which are marked in a single article, for the sum of 22 livres 10
 “ sols, although he is not set down in the *livre de l'inspecteur*. De-
 “ pones, that it does not appear by the foresaid account, which be-
 “ gins 4th July 1748, of what sex were two of the three persons to
 “ whom that account relates; but that the deponent remembers, and
 “ does affirm, that this account is relative to Mr. Stewart, and the two
 “ ladies who were with him. Depones, that, before the commence-
 “ ment of this affair, the deponent's *livre de l'inspecteur* for the year
 “ 1748, was lost, and that the deponent found it again about eigh-
 “ teen months ago. Depones, that he told the two parties, even be-
 “ fore he found this *livre de l'inspecteur*, that the account commen-
 “ cing 4th July 1748, and ending the 13th of the same month, was
 “ the account which applied to Mr. Stewart, and to the two ladies
 “ which were with him. Depones, that, since Mr. Stewart left the de-
 “ ponent's

" deponent's hotel in 1748, he had no occasion to recollect his name, un-
 " til this process was in question, because no body had spoke to the de-
 " ponent of the said Mr. Stewart. Interrogated for the pursuers, de-
 " pones, That, when the two parties came to the deponent's house in the
 " beginning of this affair, and asked him, if Mr. Stewart had staid
 " in his house in summer 1748, and if there was, upon the deponent's
 " book, an account for him and his company? The deponent then re-
 " membered, that Mr. Stewart and the ladies had staid in his house,
 " and he did point out to the two parties the articles of 4th July and
 " 8th August 1748, as relative to Mr. Stuart; and did also allow
 " both parties to examine his book, and to take a copy of the articles
 " so pointed out. Depones, that the first person who spoke to the de-
 " ponent of this affair, was Mr. Stuart here present, accompanied by
 " Mons. Buhot; the deponent does not remember what other persons
 " were with him, nor if there were any. Depones, that soon after,
 " there came three other gentlemen on the part of the defender, to
 " whom the deponent made the same answer, and pointed out the ar-
 " ticles which concerned Mr. Stewart. Depones, that, in the ordinary
 " price of his hotel at three livres a day for each person, the wine is
 " included at the rate of one bottle a day for each person; that the
 " price of the ordinary wine was twelve sols a bottle; that, when one
 " was not satisfied with half a bottle of the ordinary wine for each
 " meal, or, when any one chose to have wine at a higher price, they
 " paid only the surplus price, under the title of extraordinary. Inter-
 " rogated for the defender, depones, that, so far as he can remember,
 " it was in winter that Mr. Stuart came to the deponent's house the first
 " time. Depones, that it was Mr. Stuart, whom the deponent first ac-
 " quainted of the two books of expence, which he has formerly
 " mentioned as newly found. Depones, that he does not believe that
 " he said to any person, on the part of the defender, that he kept only
 " one book of expence in the year 1748; but that, if he did say so,
 " it was because he did not then remember of the book which he
 " found on Saturday last; adds, that at present, and for several years
 " past, he has kept only one such book. Depones, that, after having
 " given the first communication of the said book, newly found, to
 " Mr. Stuart, the deponent, did communicate the same next morning
 " to Mr. Mackonochie here present, who carried it home with him,
 " and some hours afterwards brought it back to the deponent. De-
 " pones, that when he communicated this book on Saturday last to
 " Mr. Stuart, it was in presence of Mr. Nairn and Mr. d'Anjou, both
 " here present, and that it was on the questions which they put to him
 " that he did at that instant make a search, and found the book, but
 " that

" that Mr. Stuart never had communication of it, except in the deponent's house, and never had it in his possession."

Purf pr. 845, I. Madame Godfroi depones, " That she knows the book which is now shown to her, to be the book of expence, in which she wrote, in 1748, the account of the persons who came to lodge at her house, and which was deposited at the Tournelle of the parliament. Depones, that this book is the household-register, in which should be inserted the articles concerning Mr. Stewart and the two stranger ladies, of whom the deponent spoke in her former deposition. Depones, upon the said book's being shown to her, and after having examined the same, that the account which begins 4th of July 1748, is relative to Mr. Stewart and the two ladies that were with him."

346, I. Being asked in like manner with her husband, if she could apply any other blank articles in her book. Depones, that there are a great many other accounts, to which the names of the persons to whom these accounts are relative, are not applied; and that the deponent cannot, at the bare inspection of the book, after seventeen years, apply the names; but that, if any of these persons are found upon the *livre de l'inspecteur*, about the same date, she could perhaps make the application of the names to the account. There being shown to the deponent an account of 27th July 1754, relative to a gentleman whose name is blank, conceived in these terms: " Monf. ——. They entered to supper, a man-servant and two horses:" At the same time her *livre de l'inspecteur* being given the deponent, to assist herself from it, she depones, that she does not find in the said *livre de l'inspecteur* a name which she can apply to the said account; that she cannot tell how many persons that account regards, because, not being stated at the rate of the ordinary price, but only for each furnishing which was made, there is no article which indicates, by the price, the number of the persons, and that the articles specified in the said account only shew, that they lived by the piece, of which a particular account must have been furnished them; that the said account consists of twenty-five articles of furnishings, and that there are only three of them for which the price is drawn, and in figures; and, with regard to the others, they are only specified by the nature of the furnishings, from the specifying of which the deponent was in a condition to fix the price, and to give them an account, drawn out from the said account in her register. Depones, that, in general, all the persons who come to lodge in the deponent's house are inserted, either by name, or without a name, in her book of expence, as having entered to the hotel, whether they are only at the ordinary expence, or at an expence extraordinary; and there can be none but those who arrived late, and lie only one night, who may happen

" happen not to be inserted, because of their arriving after the deponent's being in bed, as the deponent is in use to open an account for every person whom she sees arrive, even before she knows his name; and is even in use, as to those who arrive in the night-time, to insert them the next day, unless they are gone away again. Deposes, that since Mr. Stewart left the deponent's hotel, she never thought of him until she began to hear this affair spoke of."

Here your Lordships have two witnesses deposing to the residence of Sir John Stewart and his family in the hotel de Chalons, from the 4th to the 13th July inclusive, the husband swearing from *memory alone*, at the distance of seventeen years, the wife from a *late recollection*, occasioned, as she says, by inspection of her books. But this evidence, whether founded on *mere memory*, or taking its rise from *assisted memory*, seems to have appeared to the pursuers themselves in so gross a light, that even after reporting the proof to your Lordships, they fluctuated and were uncertain between their two contradictory proofs, viz. the improbable and suspicious *alibi* at Godfroi's; and the apparent but refuted *alibi* at Michelle's. In the table of contents prefixed to their proof, though extremely minute in other particulars, they chose to give the following very general and very ambiguous account of this great fact, on which they now rest their cause: " Proof of Lady Jane's situation, state of health, and conduct while at the houses of Godfroi and Michelle, incompatible with the hypothesis of her delivery in the month of July 1748, and proof that she, Sir John, and Helen Hewit, *were at the house of Monsieur Godfroi, and at the house of Monsieur Michelle, at times, and during periods*, inconsistent with the possibility of Lady Jane's having been delivered at the house of a Madame La Brun, upon the 10th of July 1748, or of her having remained in child-bed for nine or ten days after such delivery."

At last came the pleadings on the proof; and the council for the pursuers, who knew well that this *enigmatical alibi* would not be taken off their hands, were under a necessity of choosing their ground, and the election made by them, was the supposed proof arising from the depositions of Godfroi and his wife, and their *livre de depense*. They admitted the record of police to be no evidence in their favour. They admitted also the date of Michelle's book to be erroneous, and that, in all probability, the 18th, and not the 8th, was the true date of that entry. They admitted, that Mr. Andrew Stuart had been entirely in a mistake, in supposing the article of *Fluralt* to be the hand-writing of Sir John Stewart; and, in a word, they fairly gave up every article and circumstance of those conclusive, infallible, and *unerring* written proofs, on which the *Tournelle* process had been raised, on which the action

now

now before your Lordships had been advised, and finding, at last, to their sad experience, that they had nothing to resort to but the blank articles of an inn-keeper's book, supported by depositions, which will be shown to be most suspicious and most false; it was upon these proofs that they were driven, by absolute despair, to rest their cause.

Your Lordships will observe, from the deduction which has been given, that this great fact of Lady Jane Douglas's residence, at the time of delivery, has, from the first out-setting of the cause, undergone no less than five variations: 1mo, Though the hotel de Chalons was known to Mr. Stuart, at least as early as the month of October, if not sooner, he was perfectly ignorant where Lady Jane had lodged during the first four days, Godfroi and his wife having, at that time, remembered nothing of the matter, but, by *infallible* proofs it was established, that she lodged in Michelle's from the 8th July to the end of that month.—2do, Sir John Stewart's declaration having made its way to Paris, though locked up under the seal of your Lordships, the fact was then ascertained, that during the first days of Lady Jane's residence in Paris, she lodged in the hotel de Chalons, but still the *livre de logeur* of Michelle was held as clear evidence of an entry to, and residence in, the hotel d'Anjou, from the 8th July downwards.—3tio, Godfroi having prevailed on himself, all at once, to remember what he never before remembered, and the article of the 12th July, in the record of police, having been discovered, the hypothesis of a *double lodging*, and a *double name*, was invented. The entry to Michelle's on the 8th, was still insisted on, but an immediate return to Godfroi's, and actual residence there at the date of delivery, was supposed to be undoubted.—4to, In their condescendance, and other publications, it was given out that they were at these two hotels, at times, and during periods, inconsistent with the delivery on the 10th; but without entering into any explanation of particulars.—Lastly, Michelle's book, and the record of police, have been totally abandoned, and the proof of the *alibi* laid entirely on Godfroi and his wife, and their *livre de depense*.

It remains to consider the nature and strength of the evidence on which this fifth and last edition of the *alibi* is founded, and to state the obvious objections which occur against it.

1mo, Taking the fact as now told by the pursuers, that Sir John, Lady Jane, and Mrs. Hewit, resided constantly in the hotel de Chalons from their arrival in Paris to the 13th July, inclusive, it is a fact highly improbable in itself, and which cannot meet with belief.—Godfroi, the landlord of this inn, happens to be the person employed by the Reims people in running their errands at Paris, and his house

is daily frequented by such of the Reims people as have occasion to be in that city.—Mr. Mailfer, then chief magistrate of Reims, having been applied to by Sir John and Lady Jane, to recommend them to some house in Paris, and to put them in a way of having their trunks safely conveyed, without being put to the same inconvenience and hardship which, it appears, they had suffered by having their trunks detained at the custom-house near Sedan, in their way to Reims, Mr. Mailfer wrote to Godfroi, by the post, in these words: “ Sir, there is ^{Reims, 2d} ^{July, 1748.} set out to-day from Reims a Scots colonel, with two ladies, who should arrive on Thursday the 4th at Paris, by the Reims coach: I have directed them to your hotel, to light there. I do not know if it will be for any time; for I believe that their intention is to have an apartment to themselves afterwards; but the favour which I beg of you is, to get notice about what hour the coach arrives at Paris, and to meet them to discharge their trunk, and that he may not be obliged to go to the custom-house, where they would find themselves much embarrassed. As he will have some purchases to make at Paris, I have told him, that he might apply to you, as being a connoisseur in these things, and that you would not allow him to be imposed upon. If you have not time to go yourself to meet them, engage some one, or Madame your wife, to go thither; I have promised it to them, and they do absolutely expect it; I shall be very much obliged to you. I assure Madame Godfroi of my civilities.”

Mr. Mailfer had very little personal acquaintance, at this time, with Sir John or Lady Jane, and does not appear to have known much about them, or what their intentions were in going to Paris, further, than that they were not to lodge for any time in a publick inn, but were to take private lodgings. But this very application to Mr. Mailfer, and their accepting of his recommendation to Godfroi, as a person connected with the inhabitants of Reims, and going to lodge in his hotel, seems extremely inconsistent with the supposition of a fraud to be carried on in that very house. The mention made of their intention to take private lodgings, shows also, that if Sir John and Lady Jane had any fraudulent scheme in their head, they did by no means propose to make a publick inn the scene of their operations. It was well known to many persons at Reims, that Lady Jane was going to Paris in order to be delivered, and that she was to return to Reims immediately after her delivery. Is it possible then to believe, that if her delivery was not to be real, she would have chosen the only house in Paris, as the scene of action, where she could hardly escape being detected by her friends at Reims, who were to be imposed on by the fraud? Mr. d'Anjou, in his memorial, very properly argues, that to remain at Godfroi's, during the supposed time of delivery,

livery, would have been absurd, and that it became necessary, therefore, to take another lodging on the 8th, though he afterwards forgets himself, and brings them back to that very house before the 10th. — Your Lordships can never believe, that if they were carrying on a fraud, and had the time of delivery in their own power, they would have made choice of a day on which they were living publicly at an inn, frequented by the inhabitants of Reims, and to which they had been recommended by the chief magistrate of that city.

The pursuers, in answer to this, observed, that during the time of their residence at Godfroi's, they had not fixed on any particular time for the delivery; and that, upon their return to Reims, they had it in their power to fix upon any day they thought proper, though, in fact, they never spoke out the day, not even in the defender's act of baptism.

But this answer will not avail them. — Sir John and Mrs. Hewit wrote a variety of letters while in Paris, within ten or twelve days of the delivery, in which they precisely mentioned the 10th of July as the day of the birth, and one of those letters, was wrote to the servant-maids at Reims; neither does it appear, that they ever made the least secret of the day of the birth; and the supposed omission in the act of baptism has already been explained.

2do, If we can suppose, that they were so very wrong-headed, as to be living at the hotel de Chalons, at the very time that Lady Jane should have been in child-bed, it must appear altogether miraculous, that the fraud was not detected. They knew, that Mr. Mailfer had wrote a letter about them to Godfroi. They could not know at what time Godfroi was to answer that letter, or at what time he did answer it; and supposing him to have wrote any time between the tenth and the fourteenth, and mentioned the Scots colonel and his lady as still in his house, and in good health, the detection became unavoidable.

It appears, that on the 12th July, Mr. Mailfer wrote a second letter to Godfroi, in which he says, "Give me, I pray you, by the first
Purs. pr. 825, H.

"opportunity, some accounts of the Scots gentleman and ladies whom
"I addressed to you." This letter, in course of post, must have come to Godfroi upon the 13th, when Sir John and his company are supposed to have been still in that house. Godfroi, in answer to this pressing demand, of having intelligence about the Scots gentleman and ladies, would naturally write by the post next morning, being the fourteenth, as a post goes off every day to Reims, at eight in the morning, and in this letter he would, no doubt, inform Mr. Mailfer, whether the gentleman and ladies were still in his house; *when* they had left it; or when they were to leave it; and in what
state

state of health they were. This must also have occasioned a detection, when the 10th of July was afterwards given out as the day of the birth. Besides, if Sir John and Lady Jane were still in that house when Godfroi received this letter, which the pursuers suppose to have been the case, it was natural for him to have mentioned to his guests, that he had a letter enquiring about them, from Mr. Mailster, and this must have put them on their guard, when they afterwards fixed the day of the pretended supposititious birth, to keep clear of the time of their residence at the hotel de Chalons.

3tio, It appears, that they received letters from Reims, and by the way of Reims, while they were at Paris, which their correspondent, Mr. Andrieux, addressed to them at Godfroi's, and some of these letters came to hand, subsequent to their departure from Godfroi's, and prior to the time of their writing those letters, in which they first mentioned the 10th as the day of delivery. In the postscript of Mrs. Hewit's first letter to the servant-maids, after the birth, of date 22d July, she says, "Mrs. Andrieux gives a very good account of you both, and says, you are going on finely in the French." From which it appears, that Mrs. Andrieux was at that time in correspondence with them. And there is a letter in process from Mr. Andrieux, of date 18th July 1748, addressed to *Colonel Stewart, a Scots gentleman, at the house of Mr. Godfroi, at the hotel de Chalons, rue St. Martin, Paris*, in these words: "Sir, here are inclosed two letters, which I have received for you, one of which is for Madame la Comtesse, to whom I and my spouse have the honour to present our most humble respects, and to wish perfect health to you all. Your maids are very well, they present to you their most humble respects, and to the ladies. I do not remember, if, in my last, which I had the honour to write you, I mentioned to you, that I had received your trunks full of linens, which had remained at Sedan. They are at present in our house, waiting the honour of your orders."

This letter they must have received in the evening of the 19th, or morning of the 20th, and they must have received it not from the post-office but from the hotel de Chalons; from which it is pretty certain, that there must have been a connexion between Mr. Godfroi and them, after they left his house, and that he must have known where they were, and how to send letters to them, though he has now thought proper entirely to forget that circumstance. If therefore the day of delivery, and other circumstances attending the birth, were not fixed till the 21st, as is supposed by the pursuers, it is incredible that they should have put themselves so much in Godfroi's power as to be keeping up a connexion with him, even after quitting his hotel; and, at any rate, Godfroi's entire forgetfulness of this circumstance, or that any

Serv. p. 34,
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Purf. pr. 825,

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ny letters came to his care for the *Scots colonel*, must render his memory extremely suspicious in other particulars.

4to, It will be remembered, that Sir John came back to this very hotel de Chalons on the 8th of August, and remained there for several days. This was a very singular conduct in Sir John, if Godfroi was the very person in the world, whose face he ought to have avoided, as the hotel de Chalons was the supposed *locus delicti*, in which Lady Jane resided, when she ought to have been in child-bed.

5to, It is exceedingly plain, that Godfroi, when first questioned on the part of the pursuers concerning this affair, remembered nothing earthly about the matter. He is pleased to say in his oath, "That, when the two parties came to him in the beginning of this affair, and asked him about it, the deponent then remembered, that Mr. Stewart and the ladies had staid in his house, and did point out to the two parties the articles of the 4th July and 8th August 1748, as relative to Mr. Stewart." This must necessarily be a falsehood, if meant to apply to the first time of his being spoke to by Mr. Buhot, or others for the pursuers. The memorialist has already explained, that the pursuers, supposing them to have forgot the address of the letter which was taken out of Lady Jane's trunk, knew well, as early as October 1762, that the hotel de Chalons was probably the place where Sir John and Lady Jane had first lodged; and your Lordships cannot believe, that it escaped the vigilance of their agents to make the proper enquiries at that hotel; yet you have it in their private memorials, composed in November and December, and in their first plainte, presented in December, that though they had made all possible search, yet they were *still ignorant* where Lady Jane and her family lodged during the first four days.

The pursuers affected to say in the pleading, that they did not at first believe a word that Godfroi said, because his account of the matter was contradictory to Michelle's, and that they were misled at that time to give greater credit to Michelle than to Godfroi; imo, because the evidence appearing from Michelle's book, and from the depositions of his family seemed to be stronger than the evidence of Godfroi and his book; 2do, Because they had never till then heard of Sir John's having lodged in Godfroi's; and, 3tio, Because they had got intelligence of Sir John's note to Mrs. Napier, mentioning Michelle's as the house of delivery, and they even endeavoured to avail themselves of Godfroi's pretended perseverance, as a circumstance in their favour.

But these excuses are by no means sufficient. If Godfroi spoke in this manner from the beginning, and if they did not believe a word that he said, what greater reason have they to believe him now? Would they have your Lordships to deprive the defender of his state
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and birth-right, upon a tale which they themselves thought false and incredible, merely because they are now driven to have recourse to it for want of a better? In fact, however, it is not true that they knew of Sir John's note to Mrs. Napier, when they first fixed on Michelle's; no such thing is mentioned in their private memorials at the time; and it is plain from Mr. Andrew Stuart's letter to Mr. Baron Muir, of date 20th January 1763, that he had only received intelligence of that note from Principal Gordon in the month of January. Neither is it of any consequence, that the pursuers were till then ignorant of Sir John or Lady Jane's having at all resided in the hotel de Chalons; they knew that there must have been a residence for four days, at least, in some hotel or other, before coming to Michelle's, and they had heard the *hotel de Chalons* expressly mentioned at Michelle's, besides knowing that it was the house at which the passengers in the stage-coach from Reims generally lodged; it was strange, therefore, that they should have refused credit to Godfroi, even for these four days. But, indeed, it is plain, that Godfroi, when first spoke to, remembered nothing of the matter, and that he could not give them the least satisfaction or light, with regard to Sir John Stewart or Lady Jane Douglas's residing or not residing in this hotel, in July 1748. Why else should Mr. Stuart have said in his private memorials, in November and December, that he had made all possible search for, and had not, as yet, made any discovery of the house where they lodged before coming to Michelle's? The memorialist can suppose, that in the plainte given in to the Tournelle, the pursuers were willing to have suppressed Godfroi altogether, in order that he might not interfere with Michelle.—But, in the private memorials made out for the use of their council, in order that they might advise what steps were proper to be taken, it can never be supposed that they meant to use any disguise or concealment of so material a circumstance.

6to, It is true, that Monsieur Godfroi at an after-period, pretended all at once, and without any assistance whatever from his police-book, which was then fallen by, to recollect every circumstance concerning these strangers; the time of their entry; the time of their departure; the number of persons; their sex; their country, &c. and to apply the anonymous articles in his *livre de depense*, to these persons, and to them only, and all this (it is said) he deposed to in the Tournelle, without any assistance, except that of *having a plainte read over to him*, containing a detail of the facts to which he was to depose.—The æra, however, of this recollection, was somewhat remarkable. The hypothesis was by that time adopted of the *double demeure*; the police-record, and Michelle's book, fell to be reconciled; and Godfroi's recollection, that these strangers were in his house, not only from the

4th to the 8th, when they paid their expence, but also after the 8th down to the 14th, made every thing easy. At the same time, Madame Godfroi happened unfortunately to be sick, when examined by commission from the Tournelle, and her situation of health was such a check upon her memory, that she fairly confessed she remembered nothing of the matter.

Parf pr. 829,
E—E,

This difference between their two memories, is extremely remarkable, when it is considered, that the husband, according to his own story, was generally abroad, and took very little concern in the affairs of the hotel, which were entirely managed by his wife, who was neither absent nor sick in the month of July 1748, and he says, that he saw these ladies very imperfectly, as he never went into their apartment, and, through the course of the day, his affairs often called him abroad. He further says, that since Mr. Stewart left the hotel in the 1748, he had no occasion to recollect his name, until this process was in question, because no body had spoke to him of the said Mr. Stewart.

—p. 840, I.

7mo, This sudden recollection, by which Godfroi, from memory alone, without the least aid of his *livre de logeur* applied the blank articles in his household-book, to Sir John Stewart and two ladies, is the more remarkable, that it is the single instance of a blank account in the whole book which he can fill up in this manner. In the *livre de depense* there are a number of accounts for anonymous persons, and precisely in the same situation with that which begins 4th July 1748. —Godfroi, when interrogated, if he could from memory fill up the names of the persons who were blank in the book of expence for the year 1748, or any of them, made answer, that he could not say whether or not, without having examined them, *but that, perhaps, with the assistance of his livre de l'inspecteur, he could point out some of them.* The book was then put into his hands, in order that he might try what he could do, but after examining it, he was obliged to own that he did not remember one single person to whom any of those accounts related, observing, by way of apology, that the greatest part of them seemed to relate to persons who made but a short stay in the hotel.

—p. 841, D.

The *livre de l'inspecteur* was in the next place put into his hands, in order to compare it with the *livre de depense*, and that he might try if he could, even with this assistance, fill up the blanks. Godfroi, upon comparing the two books, endeavoured from *conjecture* to apply some of the blank articles in the *livre de depense* to persons whose names he found entered *nearly of the same dates* in the *livre de l'inspecteur*, but he was forced to admit, that there were no less than 15 instances in the course of the year 1748, of which he could give

no account, having found no corresponding names in the *livre de l'inspecteur*. In short, the blank account beginning 4th July 1748, is the only one in the whole book of which he can make the least application from memory; and even the applications which he makes from a comparison of the two books, are taken from mere conjecture, and may very readily be wrong, because he is obliged to admit that his *livre de l'inspecteur* does by no means contain every company or person that comes to the house; on the contrary, he himself points out fifteen instances of blank accounts, in the year 1748, for persons whose names do not appear in the *livre de l'inspecteur*. And, besides these, there are many instances of persons who appear *nominatim* in the *livre de depense*, without being inscribed in the *livre des logeurs*, some of them in the month of July 1748 *, and there must be many others, which cannot be at all discovered from these books.

8vo. Mrs. Godfroi having recovered her health, it became proper to have her deposition, if possible, in aid of her husband's. But, as she had formerly acknowledged a *non-nemini* in her oath in the Tournelle, it became necessary for her to have a *causa scientiæ*, upon which she could found her recollection. Accordingly, the *livre de logeur* is resorted to, but she does not advert, that she is deposing in flat contradiction to her *causa scientiæ*, for all that she could perceive from the *livre de logeur* was, that Mr. Stewart, a Scotsman, and his lady, had entered to the hotel on the 7th July, and yet this article brings to her remembrance, that Mr. Stewart and *two ladies* had come to the hotel on the 4th July, and remained in it till the 14th; and that the blank articles in the *livre de depense*, applying, as she says, to *three persons*, from the 4th July downwards, relate to *two persons*, found by her as entered on the 7th July. She ought rather to have been convinced, that the anonymous account applied to some other company, not only from the discrepancy of dates and number of persons, but from this remarkable circumstance, that the recommencement on the 9th was blank, as well as the original account, so that she must have been ignorant of the names of this company, even on the 9th. Yet, seeing Sir John's name on the 7th, leads her to make him the same person, whose name was unknown to her on the 9th.

At the same time, supposing the two books corresponded both in dates and in number of persons, the *causa scientiæ* would be altogether fallible, for the memorialist has already said, that an infinite variety of persons appear to have lodged in this hotel, at different times, whose names are omitted in the *livre de l'inspecteur*. There is real evidence of this, from the *livre de depense*, which contains accounts for a number

* See instances subjoined in the Appendix, No. 15th.

ber of persons, both by name and without name, who are not to be found in the *livre de l'inspecteur*. Many instances of this appear in 1748,* so that the blank articles on the 4th July, and subsequent days, may, and certainly do, apply to some other company, then in the house, whose names are not to be found in the *livre de l'inspecteur*. It is plain, that Mrs. Godfroi, though perhaps she has reasoned herself into a belief, that she *now remembers* the particulars sworn to by her, does, in fact, remember nothing at all about the matter. Her oath is merely syllogistical, and the evidence would be just the same, from the face of the blank articles themselves, without her deposition, that they are with the aid of her deposition. She admits, That she does not recollect the figure of these persons; that she never entered into their apartment; and that she never saw the ladies from that time forward. She further depones, "That when English gentlemen or ladies come to her house, it is generally for a very few days, and until they find lodging somewhere else, that this was their practice at that time, as it also is at present, and it is for that reason, *that the deponent observes these strangers less than others.*"

Pur. pr. 832,
D.

—E.

Def. pr. 731
Pur. pr.
* 438, H.

8vo, Godfroi and his wife have contradicted each other in a circumstance which they ought to have remembered much better than the accidental residence of three persons in their inn, for a few days, at the distance of seventeen years.—The memorialist thought it of some use to discover, from them, who were their servants at that time.—Godfroi pointed out two persons called Louisson and Borin. His wife mentioned two different persons of the name of Foutiers. Upon enquiry it was found, that Louisson and Borin had left the hotel prior to the 1748; from which it appears, that Godfroi had either some reason for giving a wrong direction with regard to the servants, or, at least, that his memory is not so very accurate as he pretends. One of the Foutiers mentioned by Mrs. Godfroi, was discovered after a good deal of search; but, upon being questioned about this matter, he declared, that he had no sort of remembrance of it; for which reason, neither party adduced him, more especially, as he lived at the distance of 300 miles from Paris, so that it would have been troublesome, and of little use, to have examined him; the other could not be found, though a good deal of enquiry was made for him.

829, B. 9no, Godfroi depones, "That he believes that there were, at that time, a great many people lodged in his house, because he gave to these strangers a lodging only in the second storey over that which is, at present, the remise, or coach-house of his hotel: That, in general, the deponent's hotel has always been very much frequented, and is so still."—And Madame Godfroi depones, "That her hotel

33, D

" was

* Vide Appendix, No. 15.

" was then, as it is at present, very much frequented, in so much that,
 " in order to be sure of a lodging in her house, it was often necessary,
 " and is so at present, to write before-hand to engage it:—That she ^{Perf. pr 833,}
 " does not remember particularly, if, when the gentleman and the two ^{H.}
 " ladies came to lodge in her house, all the rooms of her hotel were
 " occupied ; but that, commonly, all her rooms are full, from the be-
 " ginning of the year to the end of it, *and sometimes she cannot receive*
 " *all those who offer* :—That there were then, in the deponent's hotel,
 " fifteen rooms to let, four of which had two beds, independent of
 " lodging for servants, and that, at present, by an addition which has
 " been made to the house, she has ten additional rooms, and as many
 " closets." This makes it extremely clear, that neither the one book,
 nor the other, affords the least evidence of an application of the blank
 articles to Sir John Stewart. If the hotel was full at that time, which
 must necessarily have been the case, as Sir John, Lady Jane, and Mrs.
 Hewit, were lodged in the worst apartment, above the coach-house, it
 follows, that there must have been, at least, sixteen guests in the house,
 besides Sir John and his company, as it appears that there were nine-
 teen beds for lodgers. At the same time, the memorialist shall sup-
 pose, that, by some extraordinary accident, a third part of the house
 was at that time empty, there must still have been nine persons lodg-
 ing in it, besides Sir John, Lady Jane, and Mrs. Hewit.—The question
 is, where are the accounts for these nine persons, independent of the
 blank articles beginning on the 4th July ? Godfroi, when first examin-
 ed, made mention only of one *livre de depense* for the year 1748 ; but,
 when the parties had an opportunity of looking into this book, it was
 discovered that, besides the blank articles, it contained only accounts
 for *two persons*, as lodging in the house between the 4th and the 18th
 July, and, in general, it was observed, that this book contained very
 few accounts, and that the inn must have been very ill frequented, if
 there were not a great many more persons in it that year than appear-
 ed from the book.—This difficulty was mentioned to Godfroi, by the
 agents for the pursuers, before his second examination ; and, in order
 to obviate it, in some degree, Godfroi was prevailed on, by them, to
 search for and produce another book, which had been current at the
 same time, and in which he says he marked accounts for those whom
 he accommodated at a *lower rate* than the ordinary. By this book,
 however, the matter appears to be very little mended ; for it only
 makes the addition of *one person* during the period above mentioned :
 so that, taking the two books together, the whole persons who appear,
 from them, to have been in the inn, are Mr. de Resette, an officer,
 who entered upon the 30th May, and appears to have remained till
 the 16th July, Mr. Descourbon, who entered the 21st June, and re-
 mained to the 30th July, and Mr. Megret, who entered 1st June, and
 remained for several months. Of these persons, only Monsieur de Re-

fette is marked in the *livre de l'inspecteur*, the other two are omitted, and Mr. Megret appears to have been accommodated at a lower rate than the ordinary. Another person, Mr. Bizemont, is marked as entered upon the 2d July, but from Godfroi's oath, it appears that he had left the hotel on or before the 4th. Your Lordships will therefore observe, that there must have been a number of other persons then in the house, for whom no accounts appear in either of these books, otherwise it is impossible that there could have been the least necessity to place these strangers in the worst apartment of the house; and it is not enough to say, that these other persons may have only been lodgers for a single night, for which reason no account was opened for them. This is a supposition without evidence, and contrary to probability, as it cannot be imagined that this inn should have been constantly filled with persons coming only at night, and going away in the morning. Besides, if these other persons had gone away next morning, Sir John and the stranger ladies would certainly have been accommodated with a better apartment.

It is plain therefore, that the whole people who lodged in the inn were by no means entered in these two household-books; and indeed, taking the two books together, it appears, that, at no period of time whatever, do they contain accounts for above one third of the persons which the inn may contain; which shows to demonstration, that many people must have lodged there, whose names are entered in none of these books: it also appears, that the *livre des logeurs*, defective as it is, contains fundry instances of persons marked in that book, who do not appear in any of the household-books. Three instances of that kind are admitted to have happened in the year 1748, viz. Mr. Wright, merchant in London, entered in the *livre de l'inspecteur* 12th May 1748; Mr. de Lantage 7th February 1748; and Mr. Mahon 18th June said year. None of these three persons have any articles corresponding to them in the *livre de depense*. This is real evidence, that persons may be, and sometimes are, in this hotel, without being marked in any shape in the household-books; but these three are not to be considered as the only instances; for, in the first place, there are a variety of other names in the *livre de l'inspecteur*, which do not appear in the *livre de depense*, and are only said to have accounts corresponding to them in that book, because Godfroi, from conjecture, applies blank articles to them in the same way as to Sir John Stewart and Lady Jane, but such conjecture cannot be considered as the smallest evidence of the fact. 2dly, It is acknowledged, that the *livre de l'inspecteur* is itself exceedingly defective, and does not perhaps contain the fourth part of the people who lodge in this house; so that, in July 1748, there may have been, and probably were, four times the number of persons in the hotel de Chalons, that appear in the *livre de l'inspecteur*, and the anonymous

anonymous articles may just as well be applied to any of these companies as to Sir John Stewart. *

Neither is it of any consequence, that Sir John, though in the *livre de l'inspecteur*, has no account corresponding to him in the *livre de depense*. The same was the case of Mr. Wright, and the other two persons above named; and it is plain, from what has been said, that many other persons must have lodged in the inn, though not appearing either in the *livre de logeur* or in the household-books.

Godfroi has produced a second book, for those who were entertained at a *lower rate* than the ordinary. It is observable, that, in the book first produced, (according to Godfroi's own explanation,) there is not a single article for eating *above the ordinary*; at the same time Madame Godfroi depones, "That, if any one chose to eat at a higher price, Parf. pr. 834, H. he was served at what price he pleased." It follows, therefore, that she must either have another book which is not produced, or she must account sometimes with her guests, from memory, or from loose pieces of paper. Upon turning over the leaves of one of these books, two accounts, wrote on detached papers, in Madame Godfroi's hand, were accidentally found in it, which shows, that their accounts are sometimes wrote one way, and sometimes another, and that there can be no manner of dependence on the books, which are indeed so inaccurate and unintelligible, and so full of blunders, defects, razures, interlineations, &c. that no court in the world can pay the least regard to them.

But, further, what shows to demonstration, that Godfroi and his wife must have had some other memorandum of their furnishings, is, that, in several of the accounts which occur in their *livres de depense*, the articles, though many in number, and of different dates, appear all to have been wrote at one and the same time, and with the same ink, which shows, that they have been originally wrote on loose papers, or, perhaps, a slate-board, and afterwards transcribed into the book. It is extremely probable, that this practice of transcribing was not always observed, and indeed was unnecessary, where the account was of short continuance.

It is probable, that Sir John and Lady Jane being strangers, and English, and recommended as persons of consideration by the first magistrate of Reims, were charged above the ordinary rate.—When at Michelle's, they agreed with the *traiteur* at the rate of three livres each meal for the three, without wine, which was above the ordinary rate in Godfroi's house. It is probable too, that as Sir John and his company were to stay only for a night or two, it was thought unnecessary to open any account for them, or, perhaps, from the shortness of their stay, and the hurry in which the landlady may have been at the time,

some

* See instances of the above in the Appendix, No. 16.

some neglect or omission may have happened in this particular. Nothing is more common in every hotel in Paris, than to set down some of their guests, and omit others; and nothing can be more loose and inaccurate than their books. An instance of this occurs in the case of Duvern , a person whom there will be occasion to mention more particularly in the sequel. He appears to have lodged at the Croix de fer for some time in the year 1749, and his name occurs in the record of police, taken from the *livre de l'inspecteur* of that hotel; but, though the *livre de depense* of the hotel is still existing, and has been seen by both parties; and, though it contains many accounts and articles furnished both to persons named and to persons unknown, it contains no article which mentions Duvern , or can in any shape apply to him.

But indeed it is enough to say, that as there is no name prefixed to the articles, and as, in the nature of things, it is incredible, that an inn-keeper should, at the distance of seventeen years, be able, from his memory, to supply any blank of that kind in his books, and especially, to recall the names of strangers, whom he never saw before, and never heard of after; so it is impossible, that the application of these articles to Sir John Stewart can be admitted upon the depositions of Godfroi and his wife.

10. Upon examining the *livre de depense*, and comparing the different articles and accounts in it, with the depositions of Godfroi and his wife, it is clear, that, had the articles in question been intended for Sir John Stewart and his company, the application of them would have appeared from the account itself, without leaving any room for conjecture. This is extremely plain, from the following considerations.

In the first place, tho' accounts are often blank in the *name*, because of the landlord or landlady being ignorant of it at the time; yet if the *designation* of the person who comes to the hotel happens to be known, such designation is always put down, and supplies the place of the proper name, *e. g.* *Monsieur Martin, negociant de Limoges, entered 27th December 1750*, his designation, and the word *Monsieur* appear clearly to have been wrote at one time, and the proper name of Martin at a subsequent time.—Another example of the same kind is marked on the 17th June 1750, and there are a variety of others in the same situation. * 2dly, From inspection of the book it appears, that when ladies come to the hotel, and if an account is opened for them, whether their names are known or not, some notice is always taken of them in such account, *e. g.* *7th March 1747, Monsieur et Madame son epouse.—Monsieur et Mademoiselle sa soeur, &c.* and at the close of the account, it is said, *So many days for the gentleman and lady, or for the gentleman and ladies;* † which proves, that if women had been

* See other instances in Appendix, No. 13.

† See many instances in Appendix, No. 12.

been concerned in the account 4th July 1748, they would have been mentioned either at the top or foot, or at both ends of the account, even if the gentleman's name was unknown. 3dly, Many instances occur in the *livre de depense*, of the word Monsieur wrote at the head of an account with one hand, and the proper name subjoined with another; the meaning of which Godfroi explains to be, that when a person arrives at the hotel, they begin, by opening for him an account, though they should not know his name, and that afterwards, when his wife or he learns the name, the first who is informed of it fills up the blank. Purf. pr. 843, D.

Now, in the first place, it appears from Monsieur Mailfer's letter to Godfroi, that *before the arrival* of Sir John and his company, Godfroi knew that Sir John was a Scots colonel, and therefore, when he came to the inn, the natural way of inscribing him in the *livre de depense*, if an account was at all to be opened for him in that book, was by the description of *Colonel Ecoffois*. It will be remembered, that in their way to Reims, Lady Jane and her family passed some days at Liege, and it appears that they lodged in the house of one Lampson, who kept an inn at that place. The widow of Lampson, having been examined as a witness, produced an extract from her register, which, from the appearance of it, seems to apply to them, as it begins in this manner: " 1748, 21st May, arrived an English gentleman, with " a lady and two servants," and though no mention is here made of Mrs. Hewit, the subsequent articles seem to relate to five persons.—Your Lordships will observe, that though Sir John's name was unknown, his designation, as an English gentleman, was thought sufficient to supply the place of it; and though this designation ought more readily to have recalled him to the remembrance of Madame Lampson, yet she honestly depones, " That she has no remembrance " of the persons mentioned in the said extract, considering the distance " of time, and the great number of persons who came to lodge with " her, the deponent." 552, F.

2dly, It is very singular that this should be the only instance in the book, of *ladies* being entirely omitted to be mentioned, either under the general appellation of *ladies*, or in some other shape. In every other instance the account bears, " Monsieur et son épouse, or sa soeur, " or Monsieur et une dame, or deux dames, &c." and so many days are charged for Monsieur and Madame, or Monsieur and *ces dames*; but here there is not the least vestige or appearance that the account applies to women. 992, H.

3dly, Supposing these general descriptions of Scots colonel and ladies to have been accidentally omitted, your Lordships will attend to

this fact, which is clearly ascertained, that, on the 7th July Mrs. Godfroi was in the knowledge of Sir John Stewart's name, that she entered it with her own hand, of that date, in the *livre de l'inspecteur*, and that on the 8th she accounted with the anonymous persons, got payment of their bill, and, on the 9th, wrote also with her own hand the words, *Monsieur à payé et recommencé*, &c.—If this account therefore applied to Sir John Stewart, why did she not, according to her own uniform custom, fill up the blank upon the 7th? or at least, when she wrote the recommencement, on the 9th, how came she to leave *Monsieur* still blank?—That she should have persisted in writing a blank, when she knew the name, is perfectly incredible. It is clear that this account must have applied to some company then in the house, whose names she did not know even upon the 9th, and this company could not be Sir John Stewart and the two ladies, because she knew their designations from the beginning, and their names as early as the 7th. The memorialist is not obliged to enquire who the persons were to whom these blank articles were furnished. It is not at all wonderful that they appear not to have had a corresponding entry in the *livre de l'inspecteur*, because Godfroi must have been ignorant of their names, and therefore could not put them in the *livre de l'inspecteur*; and it has already been shown that this book is altogether defective, and does not contain above one fourth of the persons who come to the inn.

Arguments used in support of Godfroi.

The pursuers were at great pains to support the evidence of Godfroi and his book, by a variety of arguments which shall here be examined.

1mo, It was said, that the character of Godfroi was above all suspicion, and an appeal was made to the defender's agents in France, who knew this to be the case, and who had only examined one witness viz. Madame Guy, the latter's wife, to contradict him, but who, on the contrary, had corroborated his evidence.

Answer.

This appeal to the defender's agents and council produced an answer from them at your Lordships bar, in which they declared very freely their opinion of Mr. Godfroi. The story of Madame Guy was no other than this, The gentlemen acting for the memorialist in France, having gone to the hotel de Chalons for the first time, in the end of December 1762, which was soon after their arrival in that country, and some days after the declaration had gone over, in order to make enquiries at Godfroi and his wife, about their remembrance of Lady Jane, they suspected, even at that time, from Godfroi's appearance, that he was a biased, unfair witness, for which reason they wrote to this country, desiring that Sir John might recollect, if possible, any person, other than Godfroi and his wife, who knew any thing of their

their residence or transactions in that house, or who could lead to a discovery of their servants, as Godfroi himself pretended they were dead. Sir John had some confused idea of a hatter's wife, with whom he had some connexion at the time of this residence at Godfroi's. He accordingly wrote to his friend, Mr. Mailfer, the letter recited above, in which, among other things, he says, "I wish particularly to know Purs. pr. 826, G.
 " the name and abode of a hatter in Paris, whose wife executed commissions for you gentlemen of Reims.—I have also reason for wishing to know, if it be possible, the names of the *servants* who served Mr. Godfroi at the hotel de Chalons, rue St. Martin, during the summer 1748, without his knowing that I make that research"—In a postscript he adds, "If these servants of Godfroi's are no longer with him, I hope they may be found *n'import à quel prix*." These last words were taken hold of by the pursuers, who were pleased to throw out a most injurious insinuation, as if Sir John meant thereby to give a commission to Mr. Mailfer, a gentleman of the first consideration at Reims, and to the carrier of the letter, a gentleman of known character, (who has the honour to practise before your Lordships) to give money to the servants of Godfroi for the purpose of corrupting them, no matter at what expence. As this insinuation, however, was afterwards retracted, it is unnecessary to say any thing further on that head. One of the servants was discovered in July 1765, when the proof was finished, and tho' his opportunities of remarking the people who came to the inn, were much better than Godfroi's, who was seldom in the house, he had not the least recollection of any one circumstance of the matter.

Mr. Mailfer, in consequence of the hint about the hatter's wife, Answer.
 wrote to an acquaintance of his own, Madame Guy, whose husband is a hatter. This Madame Guy remembered nothing of any acquaintance with Sir John, but at Mr. Mailfer's desire, she went to the house of Godfroi, and had a conversation with him and his wife, in which Godfroi told her some particulars relative to the strangers, which she reported to the gentleman employed for the defender, and she was afterwards put into their list of witnesses, but she happened in the interval to be struck with a palsy, which affected her memory, so that her examination turned out little to the purpose.

2do, It is said, that Godfroi's *livre de depense* must be exact, because it is the common evidence between the landlord and the lodger.

This book is no common evidence between landlord and lodger, it contains only memorandums, or jottings, to assist the landlord in Answer.
 making out his bills; but it has been shown, that he sometimes writes his jottings in this book, sometimes in another book, and that sometimes he must charge his guests, as all other landlords do, from memory, or from detached pieces of paper, as the two *livres de depense*,
 produced

produced by him, do not contain accounts for one half of the persons who must often have been in his house. Supposing Mr. Godfroi were in an action against Sir John Stewart, for payment of the anonymous account as applicable to him; the memorialist desires to know, what sort of evidence this book would furnish, in such a case in any court in the world. Your Lordships would not sustain it as evidence in a question about a half-crown tavern-bill, and yet the pursuers are insisting upon it, as proof in a cause of the greatest importance, that perhaps was ever determined in any court.

3tio, It was said, that if Godfroi had been an unfair witness, he could have filled up the names in this blank account, as many instances occur of the word Monsieur, wrote with one hand, and the names filled up with another, and with a different ink.

Answer.

This would have been a very dangerous experiment for Mr. Godfroi. It is true, that there are other accounts, where the names appear to be filled up with a different hand, but they have all been filled up before the persons, to whom they applied, left the house. Had Mr. Godfroi put his hand to it, at the distance of seventeen years from the time of first writing the account, the difference of the recent ink would have been very discernible.

4to, It was argued, that his memory might be assisted by the *livre de l'inspecteur*, or at least by the article concerning Mr. Stewart in the *livre de depense* in August.

Answer.

He himself has sworn the contrary, and it is certain, that he was examined in the Tournelle before he had found his *livre de l'inspecteur*, so that he is a mere memory witness.—His wife indeed pretends to have taken her recollection from the *livre de l'inspecteur*, but she has sworn contrary to it. Godfroi also swears contrary to any information which he could have from the account 8th August. In that account he saw the name of a Mr. Stewart, without any other company with him. This could not lead him to apply another account of a different date, blank, in the name to Mr. Stewart and two ladies; so that, in fact, both Godfroi and his wife have sworn against the information of their books, the one upon a pretence of memory, and the other of recollection.

5to, These blank articles are the only account in the book which can apply to Sir John, &c.

Answer.

The memorialist has already given reasons why it is by no means extraordinary, that they should have been in the house without any corresponding account for them in the *livre de depense*.—Many other persons must have been in the same situation.

6to, As a proof of Godfroi's accuracy and credibility, the pursuers said, the first knowledge they had of Sir John Stewart's journey to Paris in August was from Godfroi.

The pursuers must have known of this journey long before they saw Answer or spoke to Godfroi, as it is expressly mentioned in Mrs. Hewit's letter to the servant-maids, of date 12th August, produced in the service.

7mo, It was observed, that, in the beginning of the cause, no mention was made of Godfroi's, and the presumption is, that Sir John and Mrs. Hewit intended to conceal it.

This conjecture of the pursuers has no manner of foundation. The Answer letter addressed to Sir John at Godfroi's, found in Lady Jane's trunk, shows the contrary. The first time that ever Sir John was questioned with regard to the house in which he lodged, upon his arrival at Paris, was, when examined before your Lordships in December 1762, and he then spoke out the name of Godfroi without any hesitation; so did Mrs. Hewit, when afterwards examined, and there is not the least appearance that either of them ever had the smallest scheme of concealing this circumstance.

8vo, The account itself is said, from the sum charged for eating, to apply to three persons; the word *recommencé*, shows also, that both parts of the account apply to the same company; the day of its commencement agrees with the entry of Sir John, Lady Jane, and Mrs. Hewit; the quantities of Burgundy seem to point out Sir John, and the article of butter denotes an English breakfast.

The date prefixed to the first part of the account, if a true date, applies to every person who entered on the 4th of July, as well as to Sir John and his company; but even for the justice of the date, your Lordships have nothing but the irregular scrawls of an inn-keeper's wife; and, in fact, sundry instances appear, of persons entered in the *livre des logeurs*, before they appear in the *livre de dépense*, which shows, either that mistakes are committed in the dates, in the *livre de dépense*, or that people are sometimes in the hotel, for several days, before appearing in the household book. Monsieur de Vauvray is entered in the *livre d'inspecteur* the 19th August 1747, and the book is that day marked by the *inspecteur*, which shows that Vauvray was then in the house, and yet no account is opened for him in the *livre de dépense*, till the 21st August. Godfroi has also deposed, that he believes a blank account, commencing the 9th August 1748, ought to be filled up with a person's name who is entered in the *livre de l'inspecteur* the 8th. There are several other persons, in the same manner, entered in the *livre de l'inspecteur*, before their accounts are entered in the *livre de dépense*; so that the persons to whom the account 4th July applies, may have been sundry days in the hotel, before that date.—The sum charged for eating at the foot of the second account, may apply either to three persons, at the rate of three livres each, or to two persons at four livres ten sols. The two accounts, though seemingly applicable

to the same company, are so disconform to each other, that it does not appear what was the rate of entertainment charged in the first account, from the 4th to the 8th, nor, consequently, what number of persons the company consisted of during these four days; and there are sundry articles, such as butter, charged in the second account, which do not appear in the first; and therefore, it is even a matter of uncertainty, whether the two accounts are relative to the same persons; at least, there is nothing from which it can appear, that the number of persons in the first account, was precisely the same with that in the second.

Far less does it appear, that these persons, supposing them to have been three in number, were a man and two women, there is not the least mention of a woman or women in the account; and it has been shown, that it is the only account in the whole book in that situation, if it applied to women. The pursuers say, that the word *Messieurs* would have been used in place of *Monsieur*, if the account had applied singly to men. This, however, is a mistake; there are sundry other accounts in the book, which begin precisely in the same manner with the blank articles of the 4th July, and which at the same time appear plainly to belong to men; for example, on the 27th February 1747, there is an account beginning in this manner: "Monsieur font
" entrés a dine."—After which follow some articles, and the entertainment at the end is summed up in this manner: "Onze jours pour
" ses Messieurs, 66 livres," and there are many others in the same situation. The very next account relates to a gentleman and two ladies; but the two ladies are mentioned in this manner: "Monsieur de
" Choiesin et entre a soupé, Madame et Mademoiselle sa fille." And on the 9th August 1748, there is an account, beginning thus: "Monsieur
" et entre a soupé, et Mademoiselle sa soeur." Many other instances of the same nature are in the books.—The whole of the application, therefore, of these blank articles to *three* persons, and these three persons a gentleman and *two ladies*, is founded on mere conjecture, unsupported even by any presumption taken from similar instances; so that in place of evidence, your Lordships have nothing but conjecture upon conjecture.

As to the quantity of Burgundy, the charge of three livres, for entertainment, includes a bottle per day to each person of ordinary wine, and, as most people incline to take wine better than the ordinary, they are charged only the surplus price of the better wine.—It is not very clear from the face of this account, whether it contains any additional quantity of wine or not. If it does, it must certainly appear somewhat singular, that ladies should have drunk more than their
bottle

bottle of wine in the day, or that Sir John, if he was at that time engaged in an enterprize, which required the greatest coolness, should have intoxicated himself every day at dinner and supper. If, on the other hand, no more was drunk than the usual quantity allowed by the ordinary of the house, the argument used by the pursuers entirely fails. It fails also still more remarkably in the quality and species of the wine, which appears to have been drunk by these anonymous persons, compared with the wine which Sir John afterwards drank in August. His account at that time, though consisting only of four articles, contains three different kinds of wine, Burgundy, sparkling Champaign, and white-wine; whereas the account furnished in July, to the anonymous persons, contains nothing but Burgundy, which is the wine usually drunk, and is to be met with in every page of the book.

The article of butter, when considered, turns clearly against the pursuers.—In the first place, no butter is charged from the fourth to the eighth, which shows a difference between the two accounts; and it is singular, that, during the time that Sir John, Lady Jane, and Mrs. Hewit were confessedly in the house, if this first account applies to them, there is not the least vestige of any thing taken by them to breakfast. 2dly, How does it appear, that this butter was used to breakfast? The very reverse appears from the account, for the persons to whom these articles apply would certainly never use butter alone to breakfast, without bread or something else to eat along with it. Godfroi and his wife have expressly deposed, that breakfast is not included in the ordinary of three livres, but that any person who calls for breakfast is charged for it over and above; and accordingly, upon looking into the *livre de depense*, there are a variety of accounts to different persons in which breakfast is charged; but there are still more in which none is charged, for this reason, that the French seldom or never eat any breakfast; they generally dine about twelve o'clock, or between twelve and one, and, till then, for the most part, they eat nothing. The account therefore, in question, seems plainly to belong to a French company, for this reason, that there is nothing stated in it for breakfast.

It is in proof, that at Liege, at Reims, at Dammartin, at Michelle's in Paris, and in short in every house in which they lodged, Lady Jane and Mrs. Hewit constantly drank tea, forenoon and afternoon, and it is not very probable, that Sir John would dispense with a meal, to which he was all his life accustomed. Madame Deaux, at Dammartin, remembers the circumstance of their breakfasting upon tea.—The Michelle people also mention the trouble they had in boiling the water for their tea in such hot weather. At Liege, an article charged in the bill,

Purf. pr. 552, bill produced by Mrs. Lampson, is sugar, and a service of tea in the morning, and the same in the afternoon. It must appear extraordinary, if Godfroi's was the only house in which they neither got tea nor any other thing for breakfast.—It is possible that they might have their own tea along with them, but they would not also bring with them the other ingredients of sugar, bread, cream, &c.

9no, By way of apology for Godfroi's memory, it was said, that the persons in question having been foreigners, and two of them ladies, and their having paid their account at different times, might help to fix them in his memory.

Answer.

Purf. pr. 829, It is true that Godfroi, when first examined, and when he had no books to assist him, said, that ladies came seldom to his house; that he did not remember any except the two ladies in question in summer G. 830, G. 1748, and that he had not an idea that any other persons in that year had paid their expence at two different times. In both of these facts, however, he is mistaken, and your Lordships will, from thence, form a judgment of Mr. Godfroi's memory, as well as of his candour. These circumstances were intended by him as causes of knowledge, to account for his surprising memory with regard to Sir John Stewart; and as his book was then locked up in the Tournelle, it is probable he never expected to be confuted. Upon looking into his books, however, it appeared, that a variety of ladies had been in his house at different times, and some of them in summer 1748. It also appeared, that there were a variety of accounts in his book, which, in the same manner, had been paid at two or more different times: for example, Mr. Abbé de la Goutte, who stands in the very same page of the book with the anonymous articles of the 4th July, appears to have entered 17th August 1748, and to have paid, and recommenced the 1st September; on the 16th he paid again, and recommenced the 17th at dinner; on the 3d October he paid and recommenced that same day at dinner. A number of other instances occur in the book; and, in short, it appears to have been a common practice. The story which Godfroi tells, that they settled and paid their expence on the 8th, intending to leave the hotel, but that they remained for some days longer, because they could not get into their new lodging, which was cleaning on account of bugs, is absurd and incredible; for, unless there had been only one lodging or apartment to let, in all Paris, it never can be supposed, that they would knowingly have gone to one which there was a necessity of cleaning before they could get into it, or that they would go into a house which had been only cleaned four days before. The case appears plainly to have been this, that he has been told that Sir John and Mrs. Hewit had mentioned the circumstance of La Brun's house being

being infested with bugs, or the circumstance told by the Michelle people of an enquiry in their house about bugs, from which he has composed this story, as one of his causes of remembrance.

The only other cause of remembrance suggested by the pursuers, was the circumstance of Sir John and his company being foreigners, and the particularity of their figures. This, however, is contrary to what both Godfroi himself and his wife have sworn; for they remember nothing about the figures of these strangers, and they say expressly, that they even observed them less than other people; so that every reason which has been suggested for giving credit to Godfroi and his wife stands clearly refuted; their memories have been shown to be most suspicious, and their causes of remembrance most inconclusive.

Were it possible to make a search through the whole kingdom of France, and to trace and investigate every person or company that may have been in the hotel de Chalons in summer 1748, it might appear who were the identical persons to which this account, if it be a fair and true one, wrote at the time, and no mistake in dates, did apply. But this is a task which your Lordships will not require of the defender, as it is enough to say, that the account itself, as it stands, even with the aid of Godfroi's *affected* memory, and Madame Godfroi's *assisted* memory, does not afford any evidence or presumption whatever of that *alibi*, on which the pursuers have now rested their cause. They have admitted, that Michelle's book, though kept with as much accuracy as Godfroi's, and though once depended on by them as irrefragable evidence, is erroneous in the date; how therefore can it be ascertained, that the scrawls of Godfroi and his wife are more perfect and more infallible.—It is singular, that they themselves now admit the evidence of Michelle and his family to be inconclusive, though they depose to the faith of their books, and, though it has the appearance of being a much more plausible ground, because supported by the standing law and authority of the police, and yet they betake themselves to a hypothesis, infinitely more precarious, because founded only on the confused and irregular memorandums of an inn-keeper, supplied by the incredible and suspicious testimony of the inn-keeper himself and his wife, deposing, from memory, to a fact, of which they cannot have the least remembrance.

At the same time, your Lordships have not legal evidence before you, even of this anonymous account, on which so great weight is now laid.—The book itself remains locked up in the Tournelle, a copy of it only is produced in this process; and, though the defender's agent thought it necessary so far to acknowledge it, as to desire a copy of the whole to be made, rather than a partial copy of the blank articles alone, on which the pursuers meant to found, in order that, from the

whole taken together, your Lordships might, form a proper idea of the nature of this book, and of the evidence endeavoured to be taken from it ; yet he did so, under protest, that, without production of the principal, no copy should be received, or be of any avail before your Lordships.

Such being the exact state of the *alibi*, on which the pursuers have now rested their cause ; your Lordships will judge how far it is conclusive.—The memorialist shall only observe, that property would indeed be precarious, were it to depend on such evidence as the conjectures of an inn-keeper and his wife, received by your Lordships *cum nota*, because of the undue influence they were put under, swearing, at the distance of seventeen years, to a confused parcel of furnishings to anonymous persons, whose faces or figures they do not pretend to remember, but whose names, and the exact dates of their entry and departure, they have been prevailed on exactly to recollect.

The memorialist has shown, that the tale itself is such as cannot gain credit with your Lordships ; for, had Sir John Stewart and Lady Jane Douglas, when they planned the imposture, laid down a scheme of detection, they could not have done it more effectually than by living in the house of Godfroi, a person daily corresponding with the inhabitants of Reims, and who did actually correspond with them during the time of the pretended residence in his house. The pursuers, in order to make the tale go down, ought to have supposed, that Mr. Mailfer, at Reims, was an accomplice in the imposture ; for, as Godfroi must naturally have wrote to him upon the morning of the 14th July, and must likewise have given some account of the *Scots colonel and the two ladies*, Mr. Mailfer must, of necessity, have known when the delivery was given out to have happened on the 10th July, that the whole was an absolute fiction, and yet he appears to this day to have kept the secret.

Your Lordships, therefore, have no evidence before you, that Lady Jane Douglas was either in the house of Godfroi, or in the house of Michelle, upon the 10th July. The system of a double residence and a double name, is now entirely given up, and an intermediate house for some days, at least, is acknowledged. The entry to Michelle's was admitted to be no earlier than the 18th or 19th, and it was fairly acknowledged in the pleading, that for about five days, the pursuers had not been able to trace Lady Jane, or to discover in what house she was lodged.—This was admitted by one of the council who spoke early in the debate, and was retracted by none who spoke after him.—But an intermediate residence being thus acknowledged, why limit it to five days ? Mrs. Hewit has expressly deposed, that they were only three days and three nights in Godfroi's ; and Sir John, in his declaration,

ration, says they were only there the first night or two.—It is remarkable, that in this material circumstance, there appears to have been no concert between Sir John and Mrs. Hewit; the one says *three nights*, the other *a night or two*.—It was impossible, that from memory, they could be precise as to days or nights; but they both agree, that two or three days was the utmost; and Mrs. Hewit says, she thinks they were four days in La Brun's before the delivery; so that, in all probability, they must have left Godfroi's on the 7th at latest; and it has been shown, that the evidence attempted of a longer stay in that inn, is perfectly inconclusive.—In like manner, the precise day of their entry to Michelle's, is not accurately determined; but, for the reasons above given, it appears pretty certainly to have been, either the evening of the 19th, or morning of the 20th. The commencement with Duchenois, the *traiteur*, who lived in the neighbourhood of Michelle's, points out the 20th to have been the first day of their having dined in that house. It is probable, that Sir John took the rooms at Michelle's on the 18th or 19th, and that Lady Jane was removed from La Brun's on the evening of the 19th, or morning of the 20th, which agrees with the depositions of the Michelle people, and also with the supposition of Lady Jane's having kept her bed for nine days. Sir John says, that she kept her bed during all the time she was in La Brun's after the delivery, and ought to have kept it longer, if there had not been a necessity of removing her; and the Michelle people, when questioned in the 1756, said that she had kept her bed for some time, even after coming to that house. The residence, therefore, in La Brun's, appears to have been from the 7th to the 20th.

The supposition of a concealment only for five days, and of a pretended delivery during that time, is totally incomprehensible. People who are engaged in a fraud, frequently over-act their parts, but never risk a discovery by *under-acting*. If Lady Jane was concealed for five days, why quit that concealment till there was sufficient time for a seeming recovery. They had no other business in Paris but to accomplish either a real, or a pretended delivery, and there was not the least occasion to pinch themselves in time. The memorialist shall suppose, that Godfroi and Michelle had been intimately acquainted, and that Godfroi had paid a visit to his friend Michelle, the very day after the child was brought to the house. He certainly would have been surprised, upon finding, that only five days had intervened between their leaving his house and coming to Michelle's, and yet that the lady had been delivered in that short interval, and able to come abroad. Five days, therefore, of an intermediate residence being granted, your
 Lordships

Lordships never can believe, that it was limited to so short a period.

LETTERS.
&c. FROM
WHICH IT
IS INFER-
RED, THAT
THE DELI-
VERY WAS
NOT ON
THE
TENTH.

The next circumstance of proof, by which the pursuers endeavour-
ed to show, that Lady Jane was not delivered on the 10th, was found-
ed on certain letters wrote at the time, and on argument arising from
Lady Jane's pocket-book, lately produced.

Much noise was made about this pocket-book, and great expecta-
tions conceived from it, before the book itself made its appearance in
process; but now that the pursuers have had the satisfaction of seeing
it, they must be sensible, that they have been entirely mistaken in
their conjectures concerning it. The contents of this book, are a par-
cel of memorandums or jottings, mostly in the hand-writing of Lady
Jane, but sometimes in that of Sir John, and the chief intention of it
appears to have been to keep them in remembrance of the letters they
wrote from time to time, to their correspondents. From the whole
style and tenor of these memorandums, it is perfectly evident, that
they never were intended for publick inspection. At the same time,
if they were engaged in a fraud, which required such a variety of o-
perations, it is quite miraculous, that this book should not have con-
tained articles, or suggested hints, leading to a complete discovery.
The reverse, however, is the case, it contains articles in favour of the
birth, some of which have already been noticed, but not one circum-
stance against it. And the letters appealed to by the pursuers, when
considered, are equally unavailable.

It was noticed on this head, 1mo, That there were six letters wrote
by Sir John, on the 10th July 1748, to different persons, viz. to the
Earl of Crawford, to Sir John's son, to Mr. MacEwan writer, to Mr.
Florintine, banker at Aix-la-Chapelle, to Mrs. Hepburn at Liege, and
to Mr. Andrieux at Reims, all of which were marked in the pocket-
book of that date, with Lady Jane's own hand, and that though four
of them were recovered, and in process, it did not appear, that any
mention was made in these four of the birth, and some of them,
though wrote on the 10th, were probably not sent off till some days
after the 10th.

Answer.

As to the circumstance founded on their being entered in the pocket-
book, of Lady Jane's hand-writing; in the first place, though the fact
had been, that she had wrote this memorandum in her pocket-book,
with her own hand, of that precise date, this would have been no way
inconsistent, because it is very certain, that a woman may be in condi-
tion to write two or three lines in her pocket-book in the forenoon,
and yet may be brought-to-bed in the afternoon. But, 2dly, from the
appearance of the book itself, it is plain, that this part of it is either
set

set down from memory, at some after time, or a transcript from some other paper, or from leaves which have been cut out. In the beginning of the book it appears, that there were a number of paste-board leaves, with some few paper leaves intermixed; all which have been cut out: and the fact was probably this, that Lady Jane wrote some of her memorandums with a pencil on the paste-board leaves, and afterwards at her leisure transcribed them into the paper leaves, which are all entire, excepting those which have been interspersed among the paste-board.

That the entry of the six letters on the 10th July was not made at the time, but was a transcript or narrative *ex post facto*, appears from the stile in which it is wrote, compared with the preceeding and subsequent articles. The page begins in this manner: "Mr. St. wrote five letters upon the 9th June, one of which was to Lord Crawford, the other four to Aix-la-Chapelle. Mr. St. wrote to Baron MacElligot the 5 of July, Mrs. Hewit the same day to Isabella Walker."—After which follows these words: "Mr. St. on the 10th of July wrote to the E. of Crawford, to his son, and to Mr. Mackewin, Mr. Florentine, Mrs. Hep. and Mr. Andrews.—We set out from Aix-la-Chapelle the 21 of May."—In the next page, "We arrived at Liege the 21st of May 1748, between 7 and 8 at night; lodged at the Black-eagle.—we set out from Liege the 25th May, &c. All this is wrote in one continued narrative; and, from the appearance of the ink, and manner of writing, has plainly been wrote at one and the same time.

Sundry other instances occur in the book, of articles of different dates, which appear to have been wrote at one and the same time, and others again have the appearance of having been wrote of the dates which they bear. Sometimes too it appears that Lady Jane has been very exact in taking down the dates of the letters wrote by them, the money given out to her servant-maids, or to butchers, bakers, &c. at other times very remiss in these particulars. In the months of August and September 1748, a number of articles are taken down of money given for bread, butcher-meat, &c. but in the months of October, November and December, not a single article. The like irregularity appears in the year 1749. In general, very few of their money-transactions are mentioned in this pocket-book, and though they seem to be more punctual as to letters than any other thing; yet there are sundry instances, even of letters wrote by them, which have been omitted to be taken down: and, in short, the whole is so irregular, having been intended merely for Lady Jane's own private use, that unless she herself were alive, to explain the different articles and jottings, any argument founded on this pocket-book, in so far as regards the order or

time of writing the articles, or any seeming omissions or blanks in it, must be very imperfect.

With regard to the letters themselves wrote by Sir John on the 10th July, they are all of them perfectly reconcileable with the delivery of Lady Jane on that day, and are even a circumstance corroborative of the birth, as no mortal can ever believe, that, if they had the day of the birth in their own option, they would have gone so nicely to work as to have made choice of a day which would just answer, and no more, and which even required explanation to make it answer. The fact is, that every one of these letters must have gone off from Paris before eight o'clock in the morning of the 10th. One of them (*viz.* to Mr. Andrews) was for Reims; one (Mrs. Hepburn's) for Liege; two (Mr. Florentine's, with the Earl of Crawford's inclosed) for Aix; and other two (to his son and Mr. MacEwan) for Britain.

The post for Reims sets out every morning at eight o'clock, and likewise the post for Liege, and therefore the presumption is, that the letter to Mr. Andrews, and the letter to Mrs. Hepburn, were sent off by the post that day before eight of the morning; and, indeed, what affords convincing evidence that this was the case, is the letter in process from Sir John to Mrs. Hepburn, of date 6th August 1748, in which he says, Ser. p. 31, C. "I would have wrote since my last of the 10th July, but recollecting
 " that Lambino was to go to Spa, and from that to Holland, knew
 " not how to direct for you, so this must take its fate, to the care of
 " the postmaster, though it contains the best news I ever gave you.
 " Lady Jane was brought-to-bed *the evening of the last day I wrote to*
 " *you, &c.*" The letters to Mr. Florentine and Lord Crawford are both produced, and bear date 10th July. The letter to Mr. Florentine contains these Words: "If my Lord Crawford is at Aix, you will give
 " him the inclosed, if not, address it to him" The presumption from their dates is, that they were sent off upon the 10th July, and, in fact, it appears from the almanac royal, that a post went off from Paris for Aix-la-Chapelle on the 10th July 1748, at eight in the morning, and from that to the 13th, no other post went for Aix.—Your Lordships cannot believe, that if these letters were not to be sent off till the 13th, Sir John would have been at the pains to sit down three days before to write them. They bear date the 10th, and there is not the least reason for supposing that they were dated three days too soon. They are not addressed by the way of Germany, Reims, or any other place, but straight to Aix-la-Chapelle; and the natural and fair presumption is, that they were sent by the Aix post, which left Paris on the morning of the 10th.

The two letters to Britain appear also to bear date the 10th July, and as the post for Calais did also leave Paris on the 10th July 1748,
 at

at eight o'clock of the morning, the same presumption takes place with regard to them, viz. that they were dispatched along with the other letters, which appear to have been wrote of the same date.

The only difficulty which occurred with regard to these two letters, was, that the communication between Britain and France, was said not to have been opened till the 18th of July O. S. and therefore, these letters could not have been sent off by the post to Calais, but must have gone in some other shape; and it was observed, that Sir John himself appears to have known that the communication was not open, because, in a letter which he afterwards writes to Lord Crawford, of date 22d July, he says, "Your Lordship will please direct for Purf. pr. *63.
"me to the care of Florentine at Aix, or, if the post is opened betwixt D.
"England and France, to the care of Mr. Andrews at Reims." It was therefore said, that these letters must have gone by the way of Holland, for which no post went off between the 8th July and the 12th; and the pursuers drew this inference, that Sir John kept them in his pocket till the morning of the 12th.

Supposing the fact to have been as *conjectured* by the pursuers, the Answer.
inference does by no means follow, that Sir John kept them in his pocket till the 12th, and then sent them off, without taking any notice of the delivery. The probability would rather be, that having wrote his six letters at the same time on the morning of the 10th, or, more probably, on the evening of the 9th, he sent them all to the post-office together at the usual post hour, without enquiring very accurately whether the post went off to all the different places precisely at one and the same time.—The conjecture, however, of their going by Holland, is clearly contradicted by evidence. In the first place, had they gone by Holland, they must necessarily have been inclosed or addressed to some person in that country to receive and pay the postage of them, and forward them to Britain. Sir John's correspondent in Holland, to whose care he afterwards sent his letter of 22d July to Lord Crawford, was Mr. William Robertson, merchant at Rotterdam; but, from the letter 22d July, inclosing Lord Crawford's, it is plain, that Sir John had not wrote to Mr. Robertson of the 10th July; for he begins in this manner: "Sir, after a long respite of intercourse of letters, I am glad Purf. pr. *63,
"to felicitate you upon the appearance of peace, &c."—2dly, The most * F.
usual way of transmitting letters from Paris to Britain in the time of war was, by the way of *Ostend*, under cover to some person in that place, who forwarded them to England, and it appears, that the post to Ostend went off on the 10th July at eight in the morning. But, 3dly, From inspection of the letters themselves, it seems now extremely clear, that they came not by any circuit of that kind, nor under cover to any person, but straight to England by the packet, and Sir John,

John, when he sent them off, must have understood the communication to be open, which in fact it was. Your Lordships will be informed, that no packet goes from the French side between Calais and Dover; there is only a packet on the English side, which was stopped in time of the war, and, though the communication was opened between the two countries, as soon as the preliminaries of peace were signed, and boats every day allowed to pass and repass; yet, before the embargo, which had been laid on the packet, could be taken off, an order from the court of Britain was necessary; which order was neglected till near the 18th July, upon which day the packet sailed, and brought over the first regular mail from Calais, which arrived in London the 26th July, and the letters were given out on the 27th.—The two letters to Sir John Stewart's son, and Mr. MacEwan, appear plainly to have come over with this mail, as they bear the London post-mark, as forwarded on the 27th July, so that, when put into the post-office on the 10th July at Paris, they went off in course of post for Calais, and lay there till the packet arrived, which was every hour expected. Sir John may perhaps have been uncertain whether the communication was yet opened, or *when* the packet would sail; but as the letters were not on business of consequence, it was not worth while to send them by the circuit of Holland; and therefore he addressed them straight for England, put them into the post-office, in order to take their chance of the packet; and it is extremely probable too, that the doubts suggested by him in his letter of the 22d July, about the communication being open, were, in consequence of some information he had received posterior to sending off these letters. Your Lordships cannot suppose that he wrote them on the 10th N. S. and kept them in his pocket till the 15th or 16th, O. S. or, in other words, till about the 26th or 27th N. S. when they might have just time to reach the packet; for it is plain from his letter of the 22d, that he had received no new intelligence which could move him to send the letters that way on the 26th or 27th, more than on the 10th, but rather *the contrary*: and besides, it can never be supposed that Sir John would have sent off letters posterior to the 22d, making no mention of the birth. So that when he wrote these letters, it is quite clear that he trusted to their going straight over: and indeed from the time that the preliminaries were signed, there was no hindrance or stop whatever, further than that the packet from Dover did not sail so soon as was expected. On the 22d he had occasion to write to Holland, to his correspondent Mr. Robertson, upon business, and being not quite certain that the communication with England was open, and likewise uncertain whether Lord Crawford had yet sailed for England or not, he appears to have inclosed his letter of that date to Lord Crawford in the letter then wrote by him to Mr. Robertson;

bertson ; but this will never contradict a fact which is otherways proved, that the two letters of the 10th of July to his son and Mr. MacEwan were sent in the straight way by Calais.

The whole of these letters, therefore, having been sent off from Paris before eight in the morning of the 10th, it is impossible they could make any mention of the birth ; as from the letters wrote at the time it appears, that Lady Jane did not begin to take her pains till about twelve o'clock, and was not delivered till the afternoon of that day.

It was observed too by the pursuers, that writing so many letters before eight o'clock in the morning, was not very probable ; and in the letter to Lord Crawford, Sir John makes mention of letters received *that day* by Lady Jane from Scotland, which shows, that they were wrote in the evening, because letters are not given out in the post-office till one o'clock in the afternoon.

The letters mentioned by Sir John to have been received that day from Scotland, could not have been received by them from the post-office, the fact being, that all their letters came by the way of Reims, to the care of Mr. Andrieux, who addressed them to Sir John, while at Paris, at the hotel de Chalons, to the care of Godfroi, so that his letters came, in the first place, from the post-office to the hotel de Chalons, and at what particular times Sir John received them from thence, while in La Brun's or Michelle's, cannot be ascertained. It is not impossible that Lady Jane may have received the letters mentioned by him on the morning of the 10th ; at the same time, it is fully as probable that the six letters, though dated the 10th, which was the day of their being sent off, were wrote on the evening of the 9th. People generally affix the date of the departure of the post, though they should write their letters a day or two before-hand ; and your Lordships have real evidence that this was Sir John Stewart's custom, as it is marked in the pocket-book, that he wrote five letters on Sunday the 21st July, and yet these letters, at least all of them that have been recovered, bear date the 22d July, because they were only sent off by the post on Monday morning the 22d July.

The pursuers endeavoured to found another argument on this entry in the pocket-book, of the 21st July, viz. that the letters of 10th July may have been only sent off on the 11th, though entered in the pocket-book of the 10th, in the same way as the letters wrote on the 21st, were sent off on the 22d ; but this argument is entirely inconclusive. They may have sometimes entered their letters of the date of which they were wrote, and sometimes on the day of sending them off ; but your Lordships can never presume, contrary to the date, and contrary to what appears to have been their practice, that a letter of the 10th, was not sent away till the 11th.

It was further objected, that when they afterwards, in their letters of date the 22d, fixed on the 10th, as the day of delivery; they endeavoured to correct or retract the dates of the letters, which they had wrote on the 10th, and that Mrs. Hewit appears even to have wrote a letter on the 11th to the servant-maids, without mentioning the birth, which date she afterwards retracted.

Answer.

The pursuers here suppose, that Sir John, Lady Jane, and Mrs. Hewit, were guilty of downright absurdity and madness, by fixing deliberately, and without cause, on a day which required explanation and correction of dates to make it answer. They say, that the age of the child rendered it necessary, to draw back the birth as far as possible, and that they had whims in their head about the 9th day, which made them place it nine days before entering to Michelle's, which was about the 19th; but surely, a single day, one way or other, could not have been of the smallest consequence. They are supposed to have been aware when writing their letters on the 21st; that they had wrote a number of letters on the 10th, and that Mrs. Hewit had even wrote to Reims on the 11th, without mentioning the birth, and yet when they have the day of their own chusing, and when the 11th would have saved them the trouble of any explanation, as the post to Reims goes off at eight in the morning, they are foolishly running themselves into a dilemma of fixing on the 10th, merely in order to make the child one single day older. Your Lordships will judge, whether so strange a supposition does not stand self-confuted. The conjecture, with regard to the 9th day, is ingenious, but does not answer the purpose, for where was the necessity of coming to Michelle's so early as the 19th? They had no earthly occasion to circumscribe themselves within such narrow limits. They had times, places, and every other circumstance of their own chusing, and if they were resolved to have nine days of interval, between the birth, and the entry to Michelle's, nothing was more easy, than to have delayed the entry to Michelle's for one single day, in which case, they might have adopted the 11th in place of the 10th, for the day of delivery, and thus, all the supposed explanation about dates, would have been avoided.

But the matter does not rest here; for, when these letters are considered, there is no such thing as a correction of dates, at least, none but what must have been perfectly innocent and accidental. Mrs. Hewit, in a letter to the maids, 22d July, says, "The last day I writ to you Tibby I told you your mistress was very well as I thought. So far from that she had been ill the wholl neght. and had not a word till tuall a clock, which was 4 ours after your letter wint af, &c."—And in the postscript she says, "The hurry I was in last writin, *I blive* I dated my letter the 11. instead of the 10th, which

“ which was the happy day.”—The pursuers say, this is evidence of Mrs. Hewit’s having wrote the letter on the 11th, without mentioning the birth, and that the amendment of the date in the postscript is affected. The memorialist denies that it is any evidence of a letter having been wrote on the 11th. The postscript must be taken as it stands, and the evidence which it furnishes is this, that Mrs. Hewit had wrote a letter to the servant-maids on the 10th, which letter, in recollecting at the distance of eleven days, she *believed* she had dated on the 11th, in place of the 10th.—This is not even a proof, that the letter was *dated* the 11th, far less that it was *wrote* on the 11th; and in fact, there is satisfying evidence, that it was wrote and sent off on the 10th; for your Lordships will observe, that the letters to the servant-maids appear always to have been either addressed to Mr. Andrieux, to be delivered by him to the servant-maids, or inclosed under cover to him. The letter 22d July, was directed in this manner: “ A ^{Purs. pr. 252,} Monsieur Monsieur Andrieux, l’ainé pour la fair tenir aux demoiselle ^{L.} de Madame Stewart, à Reims en Champagne.” Accordingly, one of the letters marked in the pocket-book, of date the 10th July, is to Mr. Andrieux, and there is none marked, either of that date or the 11th, to the servant-maids. The letter to Mr. Andrieux of the 10th, has not been recovered; but it seems plain, that Mrs. Hewit’s letter to the maids was inclosed in it. Your Lordships can hardly suppose, that one letter was wrote to Mr. Andrieux of the 10th, and another to him the very next morning, to be delivered to the servant-maids. The whole of these letters were probably wrote together on the evening of the 9th, and put in to the post-office together the morning of the 10th.—It is of no consequence, that the letter to the maids is not mentioned in the pocket-book, among the other letters wrote of that date. This letter is in fact omitted, whatever was the date of it, and many other omissions of the same kind are to be observed; for example, the letter to Mr. Robertson, of date the 22d July, though on business of consequence, is omitted in the pocket-book, and very few of Mrs. Hewit’s letters are mentioned.—Two only of her letters to the servant-maids are marked, viz. on the 5th and 22d of July, the others, of date 26th July and 12th August, are omitted; but it seems plain, that whether the date of Mrs. Hewit’s letter of the 10th, was erroneous or not, it was sent off with the other letters on the morning of the 10th; and it is by no means unnatural, that when writing on the 22d, and mentioning the remarkable æra of the birth, she should have considered with herself what was the date of the last letter she had wrote, and it is very possible that she was wrong in her conjecture of having dated it the 11th.

The

Puff. pr. 62,
C.

The only other supposed correction of a date is inferred from the letter to Lord Crawford, 22d July, which begins in this manner: "I fear the letter I wrote your Lordship the 6th instant, to the care of Mr. Florentine at Aix, may not have reached you." If this was intended as a correction of the date, it was a most absurd one, because there was no occasion for it. A letter of the 10th, without mentioning the birth, required just as little apology as a letter of the 6th, because it went off at eight in the morning, before there was any suspicion that Lady Jane was to be delivered that day.—Sir John, in writing on the 22d, had forgot the precise date of his last letter, and he calls it the 6th in place of the 10th, which Lord Crawford would see, with his own eyes, was a mistake; but because the pursuers have taken it into their heads that Sir John was, at this time, engaged in a deep-laid scheme of imposture, therefore every trifling inaccuracy in his letters, must have a meaning, and every circumstance, the most slender, must be reared up into a presumption of guilt against him. Sir John never was remarkable for much accuracy in his transactions, and it would have been singular, if, on this occasion alone, he had become perfectly distinct and regular. Two of his letters to Lord Crawford, which appear to have been wrote at Aix-la-Chapelle in April or May 1748, bear neither date nor place. Another of his letters to the same person, from Reims, bearing date 9th June 1748, says, "I should be much wanting in duty, knowing the interest you take in Lady Jane's welfare, if I did not acquaint your Lordship with her safe arrival here *yesterday*." In fact, she had arrived *two days* before.—When at Aix-la-Chapelle, Sir John had occasion to write to Mr. Robertson Merchant at Rotterdam upon money-transactions, which were of consequence to him. The letter bears neither *date* nor *place*, and Mr. Robertson, in his answer of date 3d May 1748, begins in this manner: "John Stewart, Esquire, at Aix, I am indebted to yours, of *no date*, &c."—The first letter wrote from Reims by Sir John, to his correspondent Mr. Florentine at Aix-la-Chapelle, who had recommended him to Mr. Andrieux, bears neither date nor place. It will be admitted, that all of these mistakes were innocent; and yet, had Sir John fallen into them, when at Paris, they would have been eagerly taken hold of, and construed into infallible symptoms of guilt.

Serv. p. 51,
C.

But, if Sir John thought it necessary to correct dates, why did he not, in his letter to Mrs. Hepburn of 6th August, say to her, that the date of his former letter to her of the 10th, was a mistake? On the contrary, he expressly refers to his letter of the 10th, and proceeds to inform her, that Lady Jane had been delivered *on the evening of the last day he wrote her*.—Neither does he use any ceremony of correcting dates, in his after letters to his son, and to Mr. MacEwan; he had wrote

wrote to them on the 10th upon his son's private business, and pressing him very earnestly to come over and live with him and Lady Jane, and so intent does he appear to have been on this subject, that he says nothing at all about his own affairs, or about Lady Jane. These gentlemen must have known as soon as the news of the birth reached Scotland, that it had happened on the 10th July, because so Sir John had wrote to Lord Crawford, who was in England, to Lady Wigton and Mrs. Hepburn, who corresponded with this country, and to a variety of other persons, and therefore Sir John, if corrections were necessary, ought immediately to have wrote to his son and Mr. MacEwan, that his former letters were dated by mistake on the 10th, whereas they ought to have bore a prior date; but no such thing appears; Sir John did not write again to Mr. MacEwan till the 11th November that year, and, in the letter then wrote, made no mention of former dates, nor so much as spoke of Lady Jane or her delivery, the letter being entirely on business;—neither did he write to his son till the 19th September, two months after the delivery; and, in this letter, he seems to have taken it for granted, that his son already knew of the birth, for he mentions it only in the following overly manner: “My
 “dearest son, I had the much wished-for pleasure of yours of the 8th
 “August last night, though I had flattered myself in the hopes of
 “having you with me however much that would have added to my
 “present happiness, I am much more pleased with your refusal, on so
 “good an account, as that of matrimony, Since by that I hope you
 “will make me yet more effectually so probably by the choice you
 “have made of a young gentlewoman so much to your liking, and
 “so accomplished, I am very glad you neither preferred high birth,
 “nor riches, to what is so essentially above dross, and empty sounds;
 “you have my approbation and blessing, with my prayers that your
 “change of state may be attended with all the different comforts,
 “which when combined, makes marriage, a heaven on earth, Such as
 “mine proves Since middle of July my dearest Lady Jane brought
 “me two boys at a birth, when I would have compounded for one;
 “she has recovered to a wish, and the eldest of your young brothers
 “promises well.”

The words *since middle of July* are taken hold of by the pursuers, as if Sir John had meant that Lady Jane had been delivered *since* or *after* the middle of July. Sir John's stile was sometimes not very correct, but, when the passage, now referred to, (which is pointed exactly in the manner above transcribed,) is considered, it will by no means, bear the construction endeavoured to be put on it. The word *since* means plainly *because*.—It is not the beginning of a new sentence but connects the after part of the period with what goes before; and

the circumstance of Lady Jane's having brought forth twins in the middle of July, is assigned as one of the reasons of Sir John's happiness in the married state. It is true, that Sir John, in his loose and negligent manner of writing, in place of specifying the 10th of July, which a man of great accuracy would have done, says *middle of July*; but it would be hard indeed if he should be suspected of a fraud, because he had not that turn for precision, which might be necessary in a merchant's clerk. He had, from the beginning, and in a variety of letters to his friends, fixed unalterably on the 10th July, as the day of the birth. How therefore can it be supposed, that he had any intention to vary the day in this letter to his son? The middle of a month, in common language, is not always meant to signify a precise day, standing at an equal distance, between the beginning and the end of it. When a precise day is meant, it is much easier to mention the number of that day, for example, the 14th or 15th, than to use the undetermined expression of the *middle*, which generally comprehends a space of several days, about or near the middle of the month. The pursuers have been pleased to suppose, that Sir John was not possessed of any child till the 18th or 19th of the month, therefore placing the delivery exactly in the middle, would not answer their purpose more than the defender's.

One thing extremely remarkable in these letters to his son, is the earnest manner in which Sir John presses him to come over to live with him and Lady Jane, and which he does, even in his letters of the 10th, when Sir John is supposed to have been only on the look-out for children. His son might very possibly have complied with the invitation, and not finding them at Reims, would of course have gone to Paris, where he might have arrived just in time to have marred the whole project. Nay, it was not an impossible case, that the Duke of Douglas, who was informed of the pregnancy, might have sent over a person to attend Lady Jane on so important an occasion, or to watch her if he had any suspicions of her conduct; so that, by their own letters, they afforded constant opportunities of detection.

The pursuers, in the next place, think it singular, that Sir John should have delayed notifying the birth to his friends till the 21st July, eleven days after the delivery, and that no less than five letters should have been wrote at that time, announcing it to different persons.

Answer.

That Sir John wrote four letters on the 21st, which are mentioned in the pocket-book, viz. to Lord Crawford, Lady Wigton, Baron MacElligot, and Mr. Andrieux, and a fifth to Mr. William Robertson, which is not marked in the pocket-book, and Mrs. Hewit one, of the same date, to the servant-maids, is certain; but that these were the first

first letters wrote to any person concerning the birth, cannot with any certainty appear. Walter Colvill and Mr. Douglas of Edrington, talk of having received letters very soon after the birth. At the same time, it is not improbable, that their first letters were wrote on the 21st, and the hurry and confusion they must have been in, from the unexpected birth of twins, the difficulty of finding nurses, the change of houses, &c. for the first ten days, account very naturally for their not writing sooner. Had they sat down, in the midst of all that hurry, and before Lady Jane was out of danger, to write a number of letters to their different friends, this would have been a much more surprising circumstance. It was natural too, upon their first notification of the birth, to write it to severals of their friends at once. At the same time it will be observed, that the first letter to Mrs. Hepburn after the birth, is wrote on the 6th August, and to the Duke of Douglas on the 7th of that month, though, properly speaking, it was their duty to have notified the birth to him before any other person. The reason of the delay appears plainly to have been, that Lady Jane waited till she was in a condition to write with her own hand, which was no earlier than the 7th August. It is remarkable, that not a letter appears to have been wrote by Lady Jane while at Paris, nor does Sir John's letters appear to have been so much as communicated to her. In Sir John's letter to Mrs. Hepburn, he talks of the *angel*, and in his letter to Lord Crawford, 22d July, he calls her the *meritorious lady*."—Purf. pt. 62,
D.

It is not possible to conceive, that these letters were concerted with, or communicated to, Lady Jane, and as she herself writes to no person while at Paris, after the delivery, no other reason can be assigned for this, but the situation in which she was at the time. Her situation further appears, from this remarkable circumstance in the pocket-book, that there are few or no articles in her hand-writing, which appear to have been wrote during their residence at Paris. The receipt of 1650 livres is marked in her hand-writing, on the 5th July, together with three small payments on the 5th, 6th, and 7th, but these articles have been plainly wrote from memory, at some after period, as there is a mistake in the date of receiving the money, which appears from Messrs. Taffins books, to have been the 6th and not the 5th, and the whole appearance of them shows, that they were not wrote of the precise dates which they bear. The entry relative to the letters of the 10th July, is clearly a transcript, and the same is probably the case with regard to the letters marked in a different part of the book, as wrote on the 21st. The only other article, bearing date while they were in Paris, is in Sir John's hand-writing, and relates to the entry with the *traiteur*, on the 20th July, after which, Lady Jane

Jane marks the letter wrote by her to her brother, on the 7th August, but makes no mention of the letter to Mrs. Hepburn on the 6th.

This blank in the pocket-book, with regard to their transactions in Paris, was noticed by the pursuers, as a suspicious circumstance; and they thought it strange, that there should have been no mention made of payments to Mr. La Marre, or to the nurses, or for their lodging at La Brun's.

In reality, however, this blank makes entirely against them, for it shows, that Lady Jane was not in a condition to write, and Sir John was too inattentive to make a register of their accounts or transactions. It is plain, that whether the birth was real or fictitious, they had money to pay both for nurses and for lodgings, which they could have no manner of scheme in concealing; for example, what earthly reason could there be, for not setting down the money given to the *traiteur*, or for their lodging at Michelle's, or to the nurse Favre?

One other circumstance only was taken hold of with regard to the letters wrote from Paris, viz. that some of them bear date from Reims, from which a concealment, with regard to their being at Paris, is inferred. But, as this circumstance belongs more properly to another head of the proof, viz. Lady Jane's conduct, and supposed concealment while at Paris, it will be unnecessary at present to enter into it. The memorialist has shown that there is no proof, either against the *day* or *place* of delivery, and therefore he proceeds to the third proposition which the pursuers have endeavoured to maintain, viz. That Sir John and Lady Jane, with the assistance of Mrs. Hewit, did actually carry off two children, at different times, from Paris.

ENLEVE- MENTS.

In this branch of the cause it will appear, that the conduct of the pursuers has been no less irregular, their averments still more bold, and their proof, if possible, more inconclusive, than in those already treated of. Indeed the whole proceedings in France, and the nature of the evidence adduced for the pursuers, afford a remarkable illustration, both of the wisdom of the French law, in rejecting parole testimony in such cases as the present, and of the shocking abuse which sometimes may be committed by the publication of *Monitoirs*.—A set of lower wretches never existed, than the whole of the witnesses examined for the pursuers, in both the stories of Mignon and Sanry; and the influence and prejudice under which all of them have deposed, are gross beyond measure.

In the great and populous city of Paris, accidents very frequently happen of children being stole, abstracted, exposed, or missing. Of this there is full proof from the deposition of Mr. Hombron, clerk to the hospital of *enfants trouvés*, who, among other things, says, that
in

in the year 1764, there were no less than 5560 children received into the said hospital; and also from the great number of masses which are constantly said for lost children in the different churches of Paris, as appears from the depositions of frere Auclerc, Dupré, and others.

Def. pr. 707,
C.

699, F.
702, F.
703, D.

Some particular instances of enlevements, and attempts to carry off children, are also in proof, besides those which the pursuers have endeavoured to apply to Sir John Stewart.—A pretty remarkable one is deposed to by Madame Foret, Madame St. Martin, and several other witnesses; and the circumstances mentioned by them are such, as, with a very little stretch of imagination, would have answered very well to Sir John Stewart and Lady Jane Douglas, had there not been a little difference in the article of time. A lady from the provinces came to Paris in the year 1755, and lodged in the house of Madame St. Martin; she applied to her landlady, telling her, that she would be happy to have the child of some poor person to educate, either boy or girl. It appears that she had formerly taken and educated the female-child of a poor woman in Burgundy, to the age of seven; after which, being displeased with her, she had returned her to her parents.—Madame de St. Martin, the landlady, after some enquiry, procured her a male-child of one Foret, a gardener at Neuilly Surmarne; and this child, after having been drest in new cloaths, was put out by the lady to nurse, with a woman called Aubin, at Challiot, near Paris.—The lady declined telling her name to the father and mother; but the father having followed the coach to Challiot, observed the house where the child was delivered to nurse. The nurse Aubin understood the lady who delivered her the child, to be the mother. The child's name was changed from Nicolas to Estienne, and a gentleman was employed to look after it while at nurse, and to pay the monthly wages. The father and mother, however, being uneasy about their child, began to pay visits at the nurse's house, and at last discovered themselves to be the real parents. After the child had been two years and a half at Challiot, Madame St. Martin wrote to the lady, who had by that time gone home, informing her that the father and mother were very troublesome; upon which a letter came from the lady, desiring that the child might be given back to its parents, which was accordingly done. She is described by the witnesses as a tall lady, with a long face, from thirty to forty years of age; and the nurse Aubin says she was told by Madame St. Martin, that, before procuring Foret's child, she had in view another new-born child, which a midwife was to get for her, but who had died before the transaction was finished.

696.
698.
700.

Another attempt appears to have been made in August 1750, or 1751, by a gentleman and a lady, who offered a sum of money to the wife of one Denelle, for a male-child, at that time two years old.

Def. pr. 704, F. — 704, A. — 706, A. Madame Clavet, midwife, and Madame Ellie, daughter of Madame Couchard, midwife, depone to the frequency of such applications made to midwives in Paris for new-born children.—The former of these witnesses specifies two or three instances of this kind which have happened to herself, one, in particular, of a Norman woman, who offered her the sum of 1500 livres for a child of some poor person, telling her, that he would be rich, and would have 20,000 livres a-year; and she says, this woman had a great deal of linen about her, to make people believe she was with child.

Purf. pr. 735, HL. Nay, to such a height was this practice of stealing carried some years ago, in Paris, that it occasioned a popular insurrection, for the punishment whereof sundry arrêts of parliament were pronounced. Indeed the many cases of *partus suppositio*, and other questions of filiation, which have been tried in almost every court in France, afford convincing evidence of the frequency of this crime in that country.

The pursuers, justly diffident of their negative proofs, and even of their much boasted *alibi* in the houses of Godfroi and Michelle, became extremely desirous, after every other method had been in vain tried, to fish out, if possible, some story of an *enlevement* of children, which, by an application in point of time, and with some little stretch of circumstances, might pass for a direct proof, that Sir John Stewart and Lady Jane Douglas had carried off children.—In the course of their researches they were informed, in May 1763, that the child of one Sanry, a rope-dancer, had been given away towards the end of the year 1749, or beginning of 1750; and as some of the particulars of that story seemed, in their apprehension, to furnish a handle for applying it to the youngest twin, they immediately gave out that they had discovered the real parents of Sholto; and, from that time, the system adopted by them was, that the pretended twins were taken away at different times, the one in July 1748, the other not till November 1749. The family of Sanry were easily induced to adapt circumstances and facts, so as to favour that hypothesis.—The *Monitoire* was at the same time published, asserting, that the *Scotch gentleman*, with the *lady of quality*, his wife, of a particular age therein mentioned, and her *female companion*, were guilty of that *enlevement*, (a long and particular detail of which is given) and setting forth, that, in their former trip to Paris, in July 1748, they had remained there from the 4th of that month to the end of it; that, from the 4th to the 14th, they were in the house of Godfroi, afterwards in the hotel d'Anjou; and that, in place of

of being delivered of twins, on the 10th July, in the house of a Madame La Brun, they had picked up one of the supposed twins during their stay in Paris at that period, and the other they had got from Sanry in November 1749.

The use of the Monitoire, therefore, was two-fold; first, to give a detail of the whole circumstances to be sworn to by the Sanry people, before they were examined; and, secondly, to encourage any person who had lost a child in the 1748, to fix it on the *Scots gentleman and stranger lady of quality* who had been in Paris from the 4th July to the end of it, and who was supposed to have been delivered of *twins* on the 10th July.—That the gentleman and lady did, in fact, carry off the child of Sanry in 1749, and the child of another person in July 1748, was laid down, as already established by uncontrovertible evidence. All that remained was, to procure some person or persons to adopt the hint given in the Monitoire, by applying the circumstances therein mentioned, to any loss or enlevement of a child which might have happened in 1748.—Accordingly a revelation appears to have been made by one Mignon, a workman in the glass-manufactory, and his wife, who had lost a child born in 1748; and upon the evidence of these two people, joined to the collateral hear-say testimonies of some of their neighbours, the pursuers have endeavoured to show that the defender is the identical child of Mignon, abstracted from his parents by Sir John Stewart, and afterwards produced as the offspring of Lady Jane Douglas.

The facts specified to establish this enlevement, are contained in an additional condescendance, which was given in by the pursuers a-^{The affair of Mignon.} gents, to those of the defender at Paris.—It, in substance, sets forth, That Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, before leaving Paris in the end of July or beginning of August 1748, procur-^{Def. pr. 1062.} ed to themselves at Paris a young male-child, born of French parents, and having, by false pretences, deceived the parents, they carried off that child with them from Paris to Dammartin, from thence to Reims, and afterwards from Reims to Britain; which child was baptized at Reims in September 1748, under the name and description of Archibald-James-Edward Stewart, son of Mr. Stewart, a Scots gentleman and of Lady Jane Douglas. That Sir John Stewart, on some of the days of the month of July 1748, addressed himself to one Madame Guynete, a bread-seller at the gate of Nôtre-dame, desiring her to procure for him two male children, recently born, or as near it as could be, under pretence, that he wanted these children only for a short time, to be presented to a lady lately delivered of two sons who had died. That Guynete applied to Mary d'Etampe, wife.

wife of one Charlan, and afterwards to Mary Nicolas Guerin, wife to one Mignon, a workman at the glass-manufactory. That d'Etampe brought her child to a certain place of rendezvous, but was dismissed with him. That Mignon, after a first meeting, came with her husband and child a second time, and presented it to Sir John Stewart and a lady, a foreigner, who, by the means of various promises and pretences, prevailed upon said Mignon and his wife to trust them with his child, and that, in short, the defender is the child so taken away.

The pursuers have here expressly undertaken to prove, that the child said to have been carried off is the defender, and that he was taken away in the manner above set forth, by *Sir John Stewart and Lady Jane Douglas*. Without bringing it home in this manner to the defender, and to Sir John Stewart and Lady Jane Douglas, the fact alledged had no manner of relevancy, and could not have been admitted to proof.

That a child may have been exposed, sold by, or carried off from, Mignon and his wife, some time in the year 1748, the defender has no occasion to dispute; such accidents happen so often in Paris, that they are not in the least wonderful; but the subject of enquiry, at present, is, whether the pursuers have proved that Sir John Stewart and Lady Jane Douglas did possess themselves of Mignon's child, and whether the defender is that child? In examining the proof on this head, two things will be carefully distinguished by the court, viz. the fact, that a child was taken away from, or lost by, Mignon, and the manner how, or persons by whom, this child was abstracted.

The defender will show, that, after all the preparation which these Mignon witnesses have undergone, the facts deposed to by them are extremely wide of that application which was intended, and that, even if any similarity had appeared between the circumstances of that case, and the present, the witnesses do all and each of them lie under such invincible objections, that no credit whatever could have been paid to their testimonies.

The witnesses, on whose evidence this part of the cause is rested by the pursuers, are either, 1mo, those who assisted in the transaction; or, 2do, those who relate certain particulars of it upon hear-say. The only witnesses who give direct testimony to the facts are Mignon himself, and his wife, and a woman called Edouard, at the gate of N^{otre}-dame, in whose house the child's dress was changed. This last witness is an old infirm woman, upwards of seventy-two, who remembers few of the particulars, and was not present when the child was carried off.

The chief circumstance mentioned by her is, that she saw the child
 Purs. pr. 710, undressed, and eat some bouillé; which last fact does not correspond
 G. very

very well with the supposed age of the child at the time of the enlevement. Mignon and his wife in substance depone, That Mary Mignon, the wife, was delivered of a male-child on the 28th June 1748, christened Jacque-Lewis; that she was soon after applied to on the part of a stranger-gentleman, who was desirous of having one child or two to present to his wife, who had been delivered of twins, both of which were dead; that she and her husband were prevailed on to surrender their child to this gentleman, and a young lady who was along with him, and who spoke very little French, under a promise of restoring the child in six weeks; that they came from their own house in the Fauxbourg St. Antoine, to the church of Nôtre-dame, to make this transaction with the gentleman and lady, at the desire of a woman called Guynette, a seller of biscuits, who lived in the same house with them; that the child was dressed by the gentleman and lady in very fine child-bed linen, which they had brought along with them; that this was done in the house of one Edouard, a seller of books at the gate of Nôtre-dame, and the child was then carried off by them in a coach, which the husband, after disguising himself, followed to a street in the Fauxbourg St. Germain, and the coach stopped opposite to an entry, into which the gentleman and lady, together with the child, went; but the husband, afterwards, discovered this to be a passage into another street; and, from that time, he never saw more of the gentleman, lady, or the child, tho' he made enquiry at midwives, and others in the neighbourhood.—The time which both husband and wife seem to fix on for this enlevement is the 10th or 11th July, the child being then twelve or thirteen days old; and they even endeavour to bring it to a precise day, viz. Thursday the 11th. They also give descriptions of persons, and mention fundry other particulars, some of them extremely ridiculous, which shall be noticed in the sequel. In most of the circumstances they agree exactly, and almost use the same words; which, indeed, they could hardly fail to do, as it appears that the curé de St. Marguerite, to whom they made their revelation in consequence of the Monitoire, did very unguardedly examine them, in the presence of each other, and made only one act of revelation for both; besides that, they must have had frequent opportunities of talking over together in private, and concerting the facts before they gave their deposition in judgment, though, as they could not well foresee every question that was to be put to them, they have consequently fallen into some few contradictions.

The pursuers do not pretend, that even this account given by Mignon and his wife, brings the fact home to Sir John Stewart, Lady Jane Douglas, and the defender. The only circumstances deposed to, which seem to point out the least analogy between that case and the present,

present, are the time, the description of persons, and the mention of twins. Now, supposing there were no discrepancy, or doubt as to these particulars, but the proof were uniform and clear, that Mignon's child was carried off on the 10th or 11th of July 1748, by a stranger lady and gentleman, and that mention was made of twins by the gentleman; would it from thence follow, that the enlevement was certainly made by Sir John Stewart and Lady Jane Douglas, or that the defender was the child carried off? The proof which has already been stated, with regard to the pregnancy, the delivery, and a variety of other circumstances, concomitant and subsequent, puts it beyond doubt, that Lady Jane Douglas was the real mother of the defender, and that she had no occasion, nor indeed any motive, to be guilty of stealing children; consequently, the accidental circumstances above mentioned, supposing they were clearly proved, would not in any shape affect the present question.

But when your Lordships are informed, that these three capital circumstances were pointed out by the *Monitoire*, that they are not vouched by the other evidence, and that Mignon himself and his wife stand convicted of downright glaring perjury, in a variety of particulars, it is believed, you will not think, that the smallest regard is due to them in those seemingly material articles. By the *Monitoire* they were told, that the gentleman and lady who carried off the child at that time, were *British* persons; that the enlevement must have happened between the 4th and the end of July 1748; that the supposed delivery was on the 10th of that month; and that the lady was said to have been delivered of twins, though one child only was picked up at that time, the other, at an after period in the year 1749. Accordingly Mignon and his wife assert, that the gentleman and lady appeared to be *strangers*; that they understood them to be *English*; that the gentleman said his lady had been delivered of twins, and they endeavour to bring the enlevement as near as possible to the 10th *July*, the supposed day of the birth. The memorialist will have occasion hereafter to enter into a more particular examination of the proof upon these heads, and to show, that the Mignons stand refuted. All that he means at present to suggest is, that they had an opportunity of being instructed, and certainly were instructed, in these chief articles of the story, by the *Monitoire*.

But, further, it is very clearly in proof, that this family of the Mignons, have had other instructions than the *Monitoire*, and that the most uncommon endeavours have indeed been used to pervert them. These endeavours, which the memorialist must charge to the account of certain under-agents and servants of the pursuers, have so far been attended with success, that both Mignon and his wife, from a notion
instilled

instilled into them, that their own fortunes would depend on the success of the pursuers in this cause, have been induced to go very extraordinary lengths in their behalf; but how far the cause of the pursuers will be thereby aided, may admit of some doubt. That Mignon and his wife have considered themselves as interested in the issue of this process, and that they expected great benefit from it, if the pursuers should prevail, is proved by many witnesses. It appears, that they talked of the cause as their own, and mentioned themselves as parties. They supposed, they were to get back their pretended son, and were made to believe, that though he should be deprived of his estate, he would still be a rich man, having 25,000 livres of rent independent of the law-suit. Promises appear also to have been made to them, and good deeds done, and offered to be done, to them, and their children. Lest the Monitoire should not be a sufficient instruction, printed papers were given them, by an under-agent for the pursuers, before their examination, containing the whole story of the gentleman and lady, their age, their country, their being in quest of twins, &c. Sensible, however, that if they had acknowledged any of these things upon oath, their credibility would have been suspected, they were pleased roundly to deny every fact of that kind, that was put to them, to assert, that they had always told the story in an uniform manner, and among other things to swear, that they *never read, nor received from any person, any papers with regard to this affair.*—That they have sworn falsely, appears from the following evidence.

Purs. pr. 741.

750.

748, G.

755, C.

Mr. Loret, an officer of police, depones, "That he knows Madame Mignon, wife of Mr. Mignon, living in the Fauxbourg St. Antoine, street *Traversiere*; and that she has often related to the deponent different things respecting the process between the Duke of Hamilton and the defender. Depones, that Madame Mignon has told the deponent, that the child she now claims is the defender, *against whom she pleads at present*, as the deponent understood her; and that she insisted, that this child was her son." He further depones to a conversation with her, in which she told him, "That she had made her declaration before the Curé of St. Marguerite, in consequence of the Monitoire; and that she had returned afterwards to the Curé to alter or diminish something in her revelation; but that the Curé answered her, that he could neither augment nor diminish it; that, the same day, she, Mignon, said to the deponent, she wished much that this affair was finished; that her (*Monsieur*), speaking of Mr. Stuart, had promised to do good to her and her husband during the rest of their lives; further, that Mr. Stuart had promised her to cause two of her sons be received guards of the city, [*Gardes de la Ville*], to give them the privilege

Def. pr. 653.

F.

654, F.

" of

Purs. pr. 655,
C.

“ of selling wine without buying the freedom ; and, as to her young-
 “ est son, he would cause teach him the business of cabinet-maker :
 “ Depones, That, in a third conversation, in the month of September
 “ of the present year, the said Madame Mignon came to the deponent,
 “ proposing to him to be caution for her son named Eugene,—for 2000
 “ livres, which Mr. Danjou would procure him ; and that Mr. Dan-
 “ jou had told her, Mignon, that two cautioners were necessary : That
 “ the deponent answered her, that he could not do her business, be-
 “ cause he was not acquainted with her son, and had never seen him :
 “ That Madame Mignon told him, that this money was to set up the
 “ said Eugene, who was newly married, as a wine-merchant at Vau-
 “ girard : That she then begged of him to be so good as to give a cer-
 “ tificate to prove that her son was an honest man, which the deponent
 “ granted her, although he did not know nor had ever seen him, hav-
 “ ing never heard any ill of him ; the deponent adding, that, at the se-
 “ cond conversation above mentioned, Madame Mignon told him, that
 “ she had been along with her son Eugene, with Mr. Stuart’s secreta-
 “ ry, to borrow ten crowns of him, in value thirty livres, to pay a bill
 “ her son owed when he was wine-merchant *a la nouvelle France*,
 “ which the said secretary lent her, saying to her, “ go, my poor
 “ Mignon, our affairs go on well, and you will be very soon happy. De-
 “ pones, That the same day, in this second conversation, Madame
 “ Mignon told the deponent, that her adversary died the 2d July last ;
 “ and that he had certainly got a potion [*un bouillon*] : That he was ve-
 “ ry happy in having died, as this affair would never have done him
 “ honour. Depones, That about five or six days ago, Madame Miga-
 “ non came to the deponent very early in the morning, as the depo-
 “ nent was in his bed, to tell him that she knew the deponent was up-
 “ on the list to depone before these gentlemen : That *she begged of*
 “ *him not to tell*, that she had lent him a memorial [*un factum*] be-
 “ cause Mr. Stuart would very much chide his secretary and his *valet*
 “ *de chambre*, each of whom had, unknown to Mr. Stuart, lent her
 “ one ; and that, *as she denied in her deposition* her having lent me-
 “ morials, this would make her pass for a liar. That she also said to
 “ the deponent, that Mr. Stuart had taken the certificate which he,
 “ the deponent, had granted to the son of her, Mignon, together with
 “ other papers, from her house, street *Traversiere*, and that it was in
 “ the hands of Mr. Stuart : That she also added, that her adversaries,
 “ speaking of the defender, had solicited false witnesses : That it would
 “ be proved they had given eighteen livres to a person in the street
 “ St. Bernard, parish St. Marguerite, and to one called Bertrand, who
 “ works at the manufacture of glasses, who had received nine livres to
 “ depone against her, both the one and the other. Depones, That in

“ the

“ the second conversation above mentioned, the said Mignon gave the
 “ deponent a printed paper upon the subject of this process ; *that this*
 “ *printed paper made a large volume* ; does not remember the title,
 “ nor for which party it was : That Madame Mignon had before, at
 “ the first conversation, promised to bring him one of these memori-
 “ als : That, after having given it to him, she came seeking it at the
 “ end of eight or ten days : That the deponent returned it to her, be-
 “ cause she said to him, *that she had promised it to some body else.*—
 “ Depones, that it was in the month of June last, that Madame Mig- Def. pr. 657
 “ non spoke for the first time to the deponent of the promises, which, F.
 “ she said, had been made her by Mr. Stuart, as above mentioned ;
 “ but that she did not tell the deponent at what time these promises
 “ had been made her. Depones, that it was in Madame Mignon’s
 “ house that she first spoke to the deponent of these promises ; that
 “ then he was alone with Madame Mignon. Adds of himself, that,
 “ since that time, she has several other times told it to him in his
 “ own house, but always without a witness ; and that her husband
 “ having at another time, in the month of June last, come to the de-
 “ ponent’s house in the evening to seek from him the printed memo-
 “ rial which his wife had lent the deponent, he, the deponent, said to
 “ him, “ *Well, my poor Mignon, how goes your affair ?* ” “ *It goes on ve-*
 “ *ry well,*” answered Mignon : “ *it will do us good ; they have pro-*
 “ *mised us so.*” Adds, that at the time there was nobody there pre-
 “ sent. Adds, that the said Mignon said nothing further to the de-
 “ ponent with respect to these promises. Depones, that when the
 “ said Madame Mignon told the deponent that Mr. Stuart’s secretary
 “ had lent her thirty livres, she did not tell him at what time, but
 “ only that Mr. Stuart was not then at Paris.”

The pursuers took exception at the evidence of this witness, because
 he had said, “ That he never gave account to any person, either by —658, D;
 “ word or writing, of what he had learned, from time to time, with
 “ respect to this affair ;” whereas, from Mr. Mackonochie’s oath, it
 appeared, that a letter, mentioning some of the above particulars to
 Mr. Guilman, was supposed to be of his hand-writing. It is a cer-
 tain fact, that Mr. Loret is a gentleman of as good character, and as
 much respected in his station, as any in Paris. He is incapable of
 telling a wilful falsehood, nor had he the least reason to do so, in the
 instance now mentioned. All that he seems to have meant in his de-
 position is, that he was not employed in any shape as an agent in the
 cause, (which is true) and did not render any account of his discove-
 ries, to those employed for the defender, either by word or writing,
 though he may have mentioned circumstances relative to the affair in
 private conversation, or letters to a friend, which he did not suppose

to fall under the question. It is plain, that he would not have been adduced as a witness, had he not spoke or wrote of the affair to some person or other. This he could not mean to conceal, and, therefore, if his answer appears to be somewhat generally expressed, the reason must have been, that he did not thoroughly understand the question*.

But the above facts depend not singly upon the testimony of Mr. Loret.—Mr. Sally, stocking-weaver, depones, That he knows Mr. and †Madame Mignon only from once having seen them on Sunday the 30th September last, [*a la Nouvelle France*,] in the house of Mr. Mignon, the son of the said Mignon, at which time the deponent's wife was present, together with Mr. and Madame Mignon, Mr. Popselle, cabinet-maker, and Mr. de la Rue, shoemaker. Depones to a conversation which passed among them at that time; and, among other things, says, Madame Mignon added, “ That the pretended father of her child was lately dead of a small potion, which had been given him to drink, which she repeated three times, at the same time lifting up her hand, and making the sign of drinking, *and that this gentleman had left, by his testament, to his pretended child, 25,000 livres a year.* Depones, that Madame Mignon having told a part of her story, the deponent said to her it was a droll affair, that he could spend day and night in hearing her relate it, and wished much to see the printed memorials, (*ou factums*,) which had been made upon the subject; to which Madame Mignon answered, That she had lent one memorial to a person who was to give it back to her; *that she would lend it to Mr. Popselle*, that the people of the company might read it, one after another, and when they had read it, *she would lend them others of them*; that accordingly, next day, the 1st of October, Mr. Popselle brought the deponent a printed memorial, consisting of several pieces, presented to the King by Mr. Stuart,

* In the pleading, some observations were made on the conduct of the defender's agents in France, and more particularly it was said, 1mo, That they had refused to answer certain questions that were put to them as witnesses, and, among others, whether they knew that any reports had been made concerning this affair by Mr. Loret, to Mr. Guilman. 2do, That they had employed persons to drink and converse with the Mignon family, in order to draw narrations from them concerning the enlèvement of their child. And, 3tio, That one of the under agents employed by them, was a person called Hubert, who is said to have been guilty of an attempt to practise upon one of the witnesses. As there is reason to believe, that this accusation will not be repeated in the memorial for the pursuers, so it would be improper to load this paper, with entering into unnecessary explanations. It is consistent with the knowledge of the pursuers, that the cause was conducted in France, on the part of the defender, by gentlemen of the most undoubted honour, and that their conduct in the above, and every other particular, was quite unexceptionable. In order, however, to remove every doubt or insinuation upon that head, a full detail of their conduct, in so far as it has been attacked, is subjoined in the appendix, together with some observations taken from the proof, upon the management of those employed for the pursuers.

† It is to be observed, that the appellations of *Monsieur*, *Madame*, and *Mademoiselle*, are given in France to persons of the lowest rank.

" Stuart, containing 98 pages ; that he returned this memorial to Mr.

" Popselle's youngest daughter, whom he sent for it a few days after.—

" Depones, that, in the same conversation, in the house of Mignon ^{Def. pr. 661;}

" the son, the deponent observed to the said Madame Mignon, that

" that she did but little good to her child in seeking him back, since

" it was to reduce him from a great Lord in the country where he was,

" to the son of a poor man in France; and if the deponent were in

" the place of her, Mignon, he would sacrifice his poverty to make the

" fortune of his child ; to which the said Madame Mignon answered,

" That he was not to be pitied, *that he would always have 25,000*

" *livres a year, and his aunt, who would not abandon him.*—Depones

" that he understood this aunt to be Madam Douglas, who, Madame,

" Mignon said to him was at Paris."

Madame Sally, who witnessed this conversation, swears to the same

particulars, and more especially with regard to the printed memorials,

which Madame Mignon appears to have had in great abundance. — 661, C.

— 662, D.

Madame Popselle depones, " That Mr. Mignon *lent the deponent* — 663, E.

" *a printed memorial* upon the subject of this cause, which he brought

" her himself, and said to her, that, when the deponent's husband had

" read it, *he would give her another.* Depones, that after the said

" Madame Mignon had given evidence in this cause, she came to the

" deponent, seeking back the printed memorial which the said Ma-

" dame Mignon's husband had lent her; and upon this occasion she

" said to the deponent, *that he must not tell, that this memorial had*

" *been lent him,* because she, Mignon, had said, in her deposition, that

" she had neither read, nor seen, nor lent to any body, any memo-

" rials ; and added, *that, if the deponent went to give testimony,*

" *she must say the same things.* Depones, that she did not hear Ma-

" dame Mignon say, that when the process should be finished, she

" would get a reward ; but upon recollecting herself immediately,

" she said, that she remembered, that once, since the publication of the

" *Monitoire*, without knowing when, as the said Madame Mignon came

" very often to the deponent's house, she heard her say, *that, when*

" *the affair should be ended, she would get a reward ;* but the said

" Madame Mignon did not tell her from whom she would get this

" reward, nor in what it consisted. Adds, that it was in presence of

" the deponent's husband the said Madame Mignon spoke to her of

" this reward."

Mr. Popselle depones, " That Mignon brought to the deponent's — 665, F.

" wife a printed memorial, saying to her at the same time, *Here is a*

" *printed memorial for your husband, when he has read it, I will give*

" *him another ;* that the deponent afterwards lent this memorial to

Mr.

“ Mr. Sally, a preceeding witness, who afterwards returned it to the
 “ deponent’s daughter, who went to bring it back ; and the deponent
 “ again lent it to *Mr. de la Rue*, shoemaker. Depones, that Madame
 “ Mignon came thereafter, seeking back this same printed memorial
 “ from the deponent, telling him, that she had been examined on oath,
 “ *and that she had said before the commissioners, that she had nei-*
 “ *ther seen, read, nor lent to any person any memorial.* To which
 “ the deponent answered, That he had lent this memorial to *Mr. de*
 “ *la Rue*, and that he would get it back : that this memorial, as far
 “ as he can remember, contained a requete presented to the king,
 “ one to the lieutenant of police, and other pieces which he does not
 “ recollect. Depones, that Madame Mignon having come a second
 “ time seeking back this memorial, the deponent conducted her to the
 “ house of *Mr. de la Rue*, who was sick ; and upon the said *Mr. de la*
 “ *Rue’s* saying, that he had it not by him, Madame Mignon said,
 “ *that she wished rather than 100 livres she had not lent it to any bo-*
 “ *dy : to which the said Mignon added, that she had a great many*
 “ *more in her house,* and that she would go home very quickly to
 “ put them in a place where they might be safe, because she feared
 “ these gentlemen might come to her house and seek for them.”

Mr. de la Rue concurs in the above particulars, with regard to the
 father’s having left 25,000 livres a year to the defender, and concern-
 ing the memorials or factums, one of which had been lent to himself
 by Madame Mignon, *and was produced by him to the commissioner.*

Def. pr. 670,
G.

Depones upon an interrogatory for the pursuers, “ That the said Mig-
 “ non told the deponent, and the other persons present, the manner
 “ she had got a printed memorial ; that, having gone to *Mr. Stuart’s*
 “ secretary, she had taken, in the closet of the said secretary, while he
 “ was out, a memorial, which she had put between her breast and her
 “ stays ; and that the secretary said to her upon his coming in, You
 “ have rob’d me, *upon which the secretary gave her another.*”

The pursuers, in the pleading, maintained, that these conversations had
 happened, in the midst of riot and drunkenness, in a publick-house or
 tavern, when a number of people were speaking at once, and that it
 was impossible the witnesses could give any distinct account of what
 had passed. But this observation must have proceeded from a mistake
 in not attending to the evidence. The incident which they seem to
 have had in view, is that which is deposed to by another witness,
 Claud Philipeaux, who depones to a conversation which he overheard
 between Mignon and his wife, and a man dressed in a blue riding-
 coat, which conversation, he says, *grew warm*, and the woman spoke
 loud, and mentioned promises that had been made to her and her fa-
 mily.—The same thing is deposed to by *Mr. la Vallé*, taylor, who was
 in

—674, F.

in company with Philipeau. Neither of them talk of any riot or confusion; but, at any rate, what they depose to is entirely different from the conversation with Mr. Sally, and others, upon which occasion there does not appear to have been either noise or drinking; and the whole of the witnesses who have deposed to it are persons of the most undoubted character, and produced the memorials themselves which had been given them by Madame Mignon in proof of what they said.

Mr. Hubert, wine-merchant, and Madame Hubert, his wife, have also had occasion to hear the two Mignons talk of the advantages which they were to reap from this process. Madame Hubert, in particular, mentions a conversation at her house, in which Madame Mignon said, "That one day to come my children will have wealth; there is two
 " of them who will be wine-merchants, will be received masters, and ^{Def. pr. 680, B.}
 " will get wine in their cellars; and the youngest, who is an apprentice cabinet-maker, will also be received master, and will be stocked
 " with goods. Depones, that, at other times, the said Madame Mignon, in coming to light her candle in the deponent's house, said to
 " her, You see us very poor, but one day to come we shall have
 " wealth; our affair will be finished this summer, and we will stay
 " no longer in your house."—In another part of her oath she says,
 " That the said Madame Mignon told the deponent, that her son
 " would have great riches, and that he had already got 25,000 livres
 " a year, which could not be taken from him."

But these are not the only instances in which Mignon and his wife have been convicted of falsehood. Madame Mignon expressly depones, ^{Purf. pr. 750,}
 " That she did not speak on the subject to Mary Guynet, till after ^{C.}
 " Guynet herself had made her revelation."—Mary Guynet depones, " That Madame Mignon, after having made her revelation to —709, A.
 " the curé of St. Marguerite, came that same day in the evening to
 " the deponent, and told her that there had been a Monitoire published
 " for her child; that the sister of her, (Mignon,) having heard the
 " Monitoire published, had acquainted her of it; whereupon she had
 " gone to make her revelation, and that the deponent behaved likewise
 " to go to the curé to make her revelation; that the curé would
 " send to seek her, for that he had asked of her, (Mignon,) if there
 " were no witnesses to the facts of the Monitoire; and that she had
 " answered him, that there was a woman who sold biscuits at the gate
 " of Notre-dame; that she was dead, but that she had a daughter living,
 " who is the deponent, and who could tell what she had heard
 " from her mother; that thereafter the curé sent to seek the deponent;
 " that she went thither, and made the same recital which she
 " has now made."—And this account of the matter is confirmed by

Def. pr. 652, the deposition of the curé, who examined them.—Madame Mignon's reason for denying this circumstance is very apparent; she saw that it would have the appearance of too much keenness in her, had she acknowledged that she went about picking up witnesses; and besides, it was proper that both she and Guynet should appear to have made the revelation before seeing one another, that there might not be any suspicion of a concert between them.

651, B. Both Mignon and his wife have sworn falsely in another fact, still more material. The curé depones, "That some days after they had made their revelation, the said Mignon and his wife returned to the deponent's house together, not to change any thing in their revelation, *but to describe to the deponent, the figure and age of the persons to whom the child was given*, and the deponent believes, he added the description of these persons, thus given him, to the revelation." Madame Mignon has affirmed upon oath, "That she and her husband did not return to the curé after having made their revelation, to *add or change any part of it*," and Mignon, the husband, also denies that he returned. Their reason for disguising this fact is extremely obvious; upon their first revelation, neither the wife nor husband could give any description of the persons, but as they were daily receiving hints and assistances, not only from the *Monitoire*, but from private papers, and conversations; so they thought themselves enabled, upon *this second visit* to the curé, to attempt a description of persons, in which, however, they have not been extremely successful. This second visit they thought proper to suppress in their deposition, as they were conscious, that the meaning of it would be easily guessed at. And it was for a similar reason, that they expressly denied having ever seen any private memorial or paper, relative to the cause, to wit, that they knew they had received from these papers, and from the *Monitoire*, the whole of the material facts deposed to by them.

748, I. Madame Mignon has further deposed, "That her husband quitted the manufactory of glasses, because they had diminished the workmens wages." From the oath of Mr. Filleu, inspector-general of

Def. pr. 667, that manufactory, it appears, that he was driven from it upon account of the thefts his children were suspected of.

Witnesses convicted of such clear and direct perjury, and even of attempting to suborn others to conceal the truth, can meet with no credit from any court; and, indeed, the counsel for the pursuers were forced in their pleading to admit, that the two Mignons had sworn falsely. They deserve the less credit, that from the whole of the proof which has been stated, it appears, not only that they had opportunities of being trained and instructed, but that, from views of great

great pecuniary advantage, they had in a manner adopted the cause as their own, and appeared more properly in the character of *parties* than of witnesses. The intercourse which they seem to have had with the under-agents for the pursuers, the instructions received from the Monitoire, and from private papers, the expectations formed by them, together with the evident interest which they had, to explain the fact in such a manner as to extenuate their own guilt; all these things could not fail to render them most partial and unfair; and, accordingly, every line of their evidence shows what stretches they have been disposed to make, in order to serve that cause, in which they were so keenly engaged.

From Mr. Stuart's journal it appears, that the visits paid at his hotel, by Mignon and his wife, were surprisingly frequent, and this will account for the intimacy between them and the clerk or secretary, who furnished them with the memorials, which these people afterwards lent among their neighbours, and which have been the occasion of so much perjury. Mr. d'Anjou, one of the chief agents of the pursuers, was so kind to the son of Mignon, as to lend money to him upon his note, during the course of these proceedings, and to do him other good offices, as deposed to by the young man himself. Eugene Mignon depones, "That in the beginning of the month of August last, Purf. pr. 758, B. "the deponent being pressed to pay the King's duties, for the wine "which he sold at Nouvelle France, intreated the said Monsieur d'Anjou to lend him thirty livres; that Monsieur d'Anjou at first made "difficulty, but at length agreed to lend the deponent the thirty "livres, on condition that he should repay them at the end of the "month, and should grant his note for it, which note was wrote by "Monsieur d'Anjou, and signed by the deponent; and about the 24th "or 25th of the same month, the deponent repaid to Monsieur d'Anjou the thirty livres, and the note was tore." In another part of his oath, Eugene Mignon says, "That having had an intention to 757, B. "borrow two thousand livres, upon a mortgage of his wife's effects, "he went to Monsieur d'Anjou, procureur en parlement, to propose "to him to procure a loan of that money, upon a note which the deponent's wife had given of her effects to the said Monsieur d'Anjou, "some time before she was married to the deponent, having been "cook to a family in Monsieur d'Anjou's neighbourhood, and knowing him by reputation; that Monsieur d'Anjou, in consequence of "that note, had wrote to the procureur du Roy at Peronne, at Cambray, and at Valenciennes, to inform himself of the value of "the funds which she possessed, in rents of land, in houses, and a "small fief in these different places: That the deponent having gone "to Monsieur d'Anjou's house, told him, that he had found a person "who

“ who would lend him the two thousand livres, if Monsieur d’Anjou
 “ would assure him, that there was a sufficient security to answer for
 “ that sum? To which Monsieur d’Anjou made answer, that he was
 “ not as yet informed of the value of the funds, and that if he was sure
 “ of their value, he would direct the deponent to another procureur,
 “ who would manage his affair, but that he himself would not
 “ meddle with it, because they would say, that it had come from
 “ himself, as he was employed in the affair of this process.”

The valet de chambre of another gentleman appears also to have been a busy man among the witnesses, and indeed the memorialist inclines to believe, that the promises which the Mignon family spoke of, as coming directly from Mr. Stuart, have rather come from his clerk, or valet de chambre, without his knowledge; but whatever may have been the channel, through which these poor people were misled, it is enough to say, that, in fact, they were under influence, and have been guilty of perjury. Madame Guillier depones, that a *servant*, whom she describes, and who turns out to be Mr. Stuart’s valet de chambre, came into a house where she happened to be, and after telling some particulars relative to the cause, said, “ That his master would have occasion
 Def. pr. 68, D. “ for five hundred witnesses, to prove, that Mr. Douglas was the son
 “ of a workman in the glass-manufactory; and that, if the mother
 “ was carried to England with her eyes blind-folded, she would know
 “ this son amongst all the nobility who should happen to be in com-
 “ pany with him.”

—687, E.

Mrs. Marie Louis Roussel, spouse to La Brun, merchant, depones to the same fact, and says, “ That that servant then said, that his
 “ master would have occasion for five hundred witnesses to prove, that
 “ Mr. Douglas was son to the above mentioned workman in the glass-
 “ manufactory, and that something considerable might be made by it
 “ (*et qu’il y auroit un grand benefice*) depones, That this person first
 “ gave himself out to be the servant of M. le Comte de Douglas,
 “ and said, that his master would talk to M. le Brun upon that subject.”

Such are the extrinsic exceptions which appear in evidence against the family of the Mignons, who, together with the old woman, Edouard, are the only direct witnesses to this pretended enlevement, and it has already been said, that Edouard’s deposition is altogether insignificant. The collateral or hear-say witnesses are a parcel of poor beggarly women in the neighbourhood, the most material of which, at least the two who appear to have had the best access at the time, to be informed of the particular circumstances of this affair, are Mary Guynet, the daughter of the woman Guynet, and Madame Odu-
 neau, the woman in whose house both Guynet and Mignon lived. The memorialist will have occasion to show, that these two
 witnesses

witnesses differ most materially in their accounts of the transaction; but even if they had concurred, and if all the other hear-say evidences had been uniform, the preparations which they also have undergone, and the part which Mary Guynet, in particular, appears to have acted, would have been sufficient to render their testimonies of very little weight. It has been already observed, that Mary Guynet conversed with Madame Mignon before making her revelation, and she had afterwards an opportunity of hearing the story from Mignon, the husband, in the porter's lodge of the glass-manufactory. From Mr. Stuart's journal it appears, that, on the 9th August 1763, the whole agents of the pursuers went in a body to the said porter's lodge, where they, in the first place, had a conversation with Mary Guynet, and then sent her for Mignon and his wife.—Mignon was accordingly brought, and told his story in presence of Mary Guynet. The gentlemen went next to examine Madame Mignon at her own house, and from thence they proceeded to examine the widow Charlan, who had been pointed out to them by Guynet or Mignon, as another witness to the enlevement, and they found Guynet and her together on the street, with a crowd of people about them, whom Guynet was instructing in the particulars of the story. These facts are also, in part, deposed to by Mary Guynet herself; and so conscious was she of her own merit and services, that she told Mr. Stuart, "That she had lost a good deal of time in relation to this affair, since the beginning of the re-searches, and hoped they would consider her for the loss of her time and labour."

Pur. p. 1098.

—1103, D.

—p. 1090,

In the journal, it is said, that, when Mr. Stuart was conversing with Madame Odeneau, the landlady of Madame Mignon, "two women of her neighbourhood came in, and remembered to have heard this story in the time it happened." The names of these two women, the pursuers have not been pleased to mention; but there can be little doubt, that they are two of those who have since been examined, as it is said, they remembered to have heard the story. From the same journal it appears, that Mr. Stuart, on a visit to Mignon, found one Madame who lived in the neighbourhood of Madame Mignon, when she gave away her child, and that she had allowed Madame Mignon to give suck to one of her children, to preserve her milk, in expectation of getting back her own. This appears to have been Madame Flon, since examined as a witness, whose memory too must have been refreshed by these visits to Madame Mignon, and examination in her presence.

But it would be tedious to recite every little artifice of this kind, by which these poor people have been drawn in, by degrees, to corro-

borate some few of the circumstances of the tale swore to by Mignon and his wife. The printed papers and memorials delivered, to the wife of Mignon, and by her dispersed among her neighbours, might alone account for every circumstance deposed to by these witnesses.—The family of Mignon were inspired with a notion, that, by making the circumstances of their story correspond with the Monitoire, a very considerable advantage might arise to them. Mary Guynet was brought over to the same opinion, and entered so much into the spirit of it as to become an agent in the cause. They immediately went about collecting their neighbours, relating to them the particulars of the supposed enlevement, and persuading them, that they knew or had heard of these particulars from the beginning, in order that they might be called on as witnesses, to confirm the new-invented circumstances taken from the Monitoire. That this was really the fact, will appear very clearly to your Lordships from the following depositions:

Purf. pr. 726,
E.

Madame Canivet depones, “ That, about ten months ago, the Demoiselle Guynet, daughter of the said Madame Guynet, came to the deponent’s house to tell her, that some person had come to her, the said Guynet, the daughter, to ask her questions on the subject of the carrying away of a child from the Fauxbourg St. Antoine, and then the said Guynet, the daughter, recounted to the deponent what she, (Guynet,) had heard of it from her mother; and this recital recalled to the deponent’s memory, a confused idea, that Guynet, the mother, had spoke to the deponent of the same event. Depones, that, according to the confused remembrance which remains with the deponent of that affair, she believes that Guynet, the mother, told her at the time that it was near Notre-dame that the child was given away; and what the deponent thinks she chiefly recollects is, that she then asked at Guynet, the mother, to what sort of a man it was that the child had been given?—And that the said Guynet, the mother, answered her, That it was to a gentleman of a certain age, such as about fifty years; that he appeared to be a stranger, because the said Guynet, the mother, did not well understand what he said, as he spoke French ill. *Further, the deponent is not sure if these ideas, which she believes she recollects have not been formed upon what was told her by the said Guynet, her daughter, seeing that it was an affair which did not in any way interest the deponent.*”

—727, D.

Mr. Canivet depones, “ That he remembers that the deponent’s wife recounted to him one day a story, which had been told to her by the said Guynet of the carrying away of a child, and that it was at dinner, the same day on which that story had been told to the deponent’s wife; that she made a recital of it to the deponent, but that the deponent did not hear the thing himself from the said Guy-

net.

“ net. Depones, that the deponent’s wife did at that time tell him,
 “ that she had been informed by the said Guynet, that the child car-
 “ ried away had been asked by a man who appeared to be of a pretty
 “ advanced age, and that Guynet had judged him to be a stranger, be-
 “ cause he spoke bad French, and with a good deal of difficulty. De-
 “ pones, that it may be fifteen or sixteen years since this recital was
 “ made by the said Guynet, and that the deponent fixes this epoch by
 “ that of the decease of his mother-in-law, who died thirteen years a-
 “ go ; and it happened two or three years before her death. Interro-
 “ gated for the defender, depones, that he is acquainted with the
 “ daughter of the said Guynet ; that he saw her about a year ago ;
 “ *that she recounted to him the detail of that affair, and that her recital*
 “ *may have served to recal to the deponent’s memory circumstances which*
 “ *he might not perhaps have otherways recollected.*”

Some of the other witnesses are not so honest as to acknowledge,
 that the facts which they recite, as if from hear-say at the time, were
 in reality taken from the late hear-say of Madame Mignon and Mary
 Guynet. But that the *original* hear-say was entirely different from the
 late one, appears clearly from the deposition of Madame Odoneau, the
 most credible of all the pursuers witnesses on this head, and who had
 the best opportunities of being informed. She depones, “ That she ^{Purs. pr. 711, F.}
 “ has dwelt these twenty-two years, in the house which she at present
 “ possesses in the *rue de Reuille* ; that Monsieur Mignon and his wife
 “ were her tenants in the said house during the years 1747, 1748, and
 “ 1749 ; that the deponent saw Madame Mignon delivered of a male
 “ child, in the month of June or of July, now sixteen years past.
 “ Depones, that Madame Mignon was very poor, and that one Ma-
 “ dame Guynet, one of the deponent’s tenants, and who sold biscuits
 “ at the gate of Nôtre-dame, as she has told the deponent, came to
 “ acquaint Madame Mignon, that a gentleman, whom she had seen
 “ before Nôtre-dame, wanted to have a child of three, four, or five
 “ weeks old, but they did not know what he wanted to do with it,
 “ that is to say, that the deponent does not know, and Madame Guy-
 “ net never told her *for what reason that gentleman wanted to have a*
 “ *child.*” She then proceeds to relate some other particulars, immate-
 rial to be noticed ; and depones, “ That all which the deponent has — 712, E2
 “ hitherto said, she had in part from Madame Guynet, and in part
 “ from Madame Mignon.” She adds, “ That, at the time of this e- — 712, F1
 “ vent, it was said, that there was a leprous prince, for whom they
 “ were seeking children to make baths of their blood, and that it was
 “ on that account that the people threw out so many reproaches against
 “ Madame Mignon. Depones, that the deponent has seen and handled
 “ the

Nota, the bas-
fons in Paris
are of white
earthen ware.

“ the child ; that she does not very well remember of what age it was
“ when it was given away ; that it might then be *five or six weeks*
“ *old* ;—that it was a large and a fine child. Depones, that she re-
“ members positively that it had blue eyes, and that it was fair, but
“ she does not remember the other treats of its face :—Adds, that the
“ eyes and the hair of children change, and that the deponent had
“ blue eyes, and hair as fair as a bason, although her eyes are not
“ now blue, nor her hair fair, and that this change happened to her
“ when she was *almost twenty years of age*. Being interrogated for the
“ defender, depones, that she has heard it said by Madame Mignon and
“ Madame Guynet, that the child was dressed magnificently in the book-
“ feller’s house, and that the gentleman to whom she gave the child was
“ big and strong, and had *a vest all gold*.—Depones, that it is more
“ than two years since the deponent saw either Mignon or his wife. In-
“ terrogated for the pursuers, depones, That she heard, in the time of
“ this event, that there was presented to the same gentleman another
“ child of the Rue St. Marguerite, Fauxbourg St. Antoine, but that
“ he was not accepted of, because the gentleman did not find him to
“ his fancy ; that the deponent heard the Monitoire read, *but that she*
“ *did not think that it was for Madame Mignon’s child* :—Adds, that she
“ was not in revelation. Interrogated for the defender, depones, That
“ neither Monsieur nor Madame Mignon ever told the deponent that
“ they had got any news of their child. Depones, that Madame Mig-
“ non told the deponent, *that the gentleman would not tell her for what*
“ *he wanted to have her child, which gave her a great deal of pain*.—
“ Interrogated for the pursuers, depones, That she does not remem-
“ ber if Madame Mignon or Madame Guynet told her, that there was
“ *a lady* in the bookseller’s, when the child was given away. Inter-
“ rogated for the defender, depones, That she saw the child every
“ day in her house before he was given away.”

It will be observed, that, in the whole of this woman’s account of the matter, there is no mention either of *strangers* or of *twins*, or even of a *lady* being concerned ; and the time which is fixed on seems to be the *middle of August*, and not the beginning of July. She also says, that the demand was not for a new-born child, but for a child, some weeks old, and that the gentleman did not explain for what purpose he desired the child, which gave Madame Mignon *great pain*. It is further remarkable, that Madame Oduneau did not think that the Monitoire had any relation to Mignon’s child.

Purl. pr. 714, C. Some of the other hear-say witnesses talk of a lady being concerned,
—717, D. but they agree in this, that she was said at the time to have the air
of a *chamber-maid*.

“ Pierre

Pierre Kamper, the Swiss, of the glass manufactory, depones, "That ^{Purs. pr. 721, F} the deponent heard, by the common report among the workmen of the said manufactory, that Mignon had lost a child; but the deponent did not learn at the time in what manner he had lost it."—In ^{—722, H.} another place he says, "That the workmen of the manufactory did at the time throw out reproaches against Mignon for having given his child in that manner, to which Mignon made no answer."—Ma- ^{—725, H.} dame Kamper depones, "That it is a very long time since she knew Guynet, the daughter, but that she did not speak to the deponent of this affair before the publication of the *Monitoire*. Depones, that ^{—726, A.} she remembers the common talk, and the murmurs of all the neighbours, at the time when Mignon and his wife gave or sold their child: that this talk lasted several days, and that the deponent never knew any of the circumstances of the event."—She further ^{—725, B.} says, That Mignon and his wife were reproached by the neighbourhood for having given away or sold their child; and yet it does not appear that they ever offered to defend themselves or silence these reproaches, by telling the story in the way now given out by them.

But, taking the fact as appearing on the face of their own most suspicious evidence, and of such of the hear-say witnesses as have been induced to support them in circumstances, it is a most improbable and absurd fiction, at least in so far as regards those particulars of the story, which are founded on as applicable to the present cause.

The first great circumstance from which an application of it is in- ^{r. Time.}ferred, is the supposed *co-incidence in time*. With regard to this, however, the system of the pursuers has undergone a very considerable variation since the original discovery of the enlevement. At first their scheme was to bring it to the 10th or 11th July; they are now desirous that it should rather be brought down to the 18th.—The meaning of the first supposition was obvious, viz. that the 10th having been given out by Lady Jane as the day of the birth, it might be of use to make the time of the enlevement correspond with that of the supposed birth; and as the transaction is said to have lasted two days, their intention, no doubt, was to plead that the child was bargained for between Sir John and the wife of Mignon, at the gate of Notre-dame, on the 10th, and was brought and delivered over to him on the 11th.

Accordingly your Lordships will observe, what a straining there is among the witnesses, to bring the enlevement to these precise dates. Mignon, the wife, depones, "That, when the deponent gave her ^{—746, B.} child before Nôtre-dame, he might be about *thirteen or fourteen days old*, as he was born on the eve of St. Peter's day, the 28th of " June

" June 1748, baptised and named at the parish-church of St. Marguerite;
 " and she believes the day on which she gave him away was the *ninth*
 " *or tenth of July*, and the deponent thinks it was on a *Thursday*, be-
 " cause that was the day of the week on which her husband gave an
 " account of his work at the glass-manufactory, and the deponent de-
 " fired him to give it up early that day, that he might go with her
 " to carry the child; that the gentleman asked the deponent, if her
 " child had been baptised? To which the deponent answered, It is
 " not our way to allow a child to be *thirteen or fourteen days* without
 " being baptised, and that the child's name was Jacques Lewis."

Purf. pr. 754.

Mignon, the husband, depones, " That he believes, that when his
 " child was carried before Notre-dame, it was not above *twelve or*
 " *thirteen days old at the utmost*, being born the 28th of June, the eve
 " of St. Peter, and baptised the 1st of July 1748; and that the reason
 " why the deponent says, he was very sure that it was on a *Thursday*
 " the child was carried before Notre-dame is, that the deponent had
 " delivered up his work that day at the manufactory, which happens
 " only on the *Thursday*, that being the day on which they clear the
 " week, otherwise the payment is delayed for a fortnight." Here they
 fix on a *Thursday* as the day of the enlevement, and from the dates
 mentioned by them, compared with their account of the age of the
 child, viz. that he was *thirteen or fourteen days* old, this brings it pre-
 cisely to *Thursday* the 11th of July, the first communing having
 happened on the 10th, and the actual abstraction on the 11th.

In these æras they are supported by some of their neighbour wit-
 nesses, who were equally instructed with them as to the time necessary
 to be pitched on for this enlevement.

Jacqueline d'Estampes, the sister of the woman Charlan, whose child
 is said to have been presented to the gentleman a day or two before
 that of Mignon, says, " That the said child (who appears to have

—p. 702, C.

—p. 704, F.

" been baptised on the 23d *May*) was only *six weeks* old at the time,"
 which brings the date of his being presented, exactly to the 8th or 9th.

—p. 707, E.

Mary Guynet says, " She remembers, that it was some time in the
 " month of July, that the child of Monsieur and Madame Mignon
 " was given away; that the deponent remembers, that it was a week
 " or a *fortnight* before the feast of St. Clair, and that which made her
 " remark this is, that St. Clair, which is in the month of July, is the
 " feast of the workmen of the glass-manufactory of the Fauxbourg, St.
 " *Antoine*, on which day the workmen dress themselves in their best
 " cloaths; and that Monsieur and Madame Mignon, who were for-
 " merly very ill-clothed, had bought ready-made cloaths, with the
 " money which the gentleman had given them, with which they were
 " often

" often reproached in the neighbourhood, as all the quarter knew of it."

Madame Flon says, " She believes, that Mignon's child was *twelve* Purf. p. 714, *or fifteen days* old when he was given away, and that she saw Ma- H. dame Mignon carry out the child in her lap." Madame Dumont depones, " That when the child was given by Madame Mignon, he —718, G. " was sixteen or seventeen days old, and that if he was three weeks, " it was the very utmost: the deponent remembers, that it was before " the feast of *St. Clair*, and, as she believes, the *10th or 11th of July*, " or thereabouts, sixteen years ago; that what makes the deponent " recollect this epoch, is, that the feast of *St. Clair*, which is always " the 18th of July, is the feast of the workmen of the glass-manufac- " tory; that the deponent's husband was a workman of the glass-ma- " nufactory, and that Mignon and his wife had bought cloaths ready- " made, with the three Lewis which Madame Mignon had received " from the gentleman; and that this made a great noise and a terrible " scandal in the quarter, and the people said, that they had sold their " child to buy cloaths, and to keep the feast."

The feast of *St. Clair*, from which some of these witnesses take their mark, appears to have happened in that year, on Monday, the —734, F. 2d July. So that, if these witnesses are to be credited, and if their causes of remembrance are of any significance, they have fixed the time of this enlevement to have been Thursday, the 11th of July. How far it is probable that their memories served them at the distance of sixteen years, to ascertain this precise day and date; or, whether it is not rather to be presumed, that they were obliged to the *Monitoire* and other assistances, for so accurate a recollection, is left with your Lordships to determine. One thing certain is, that this date, though originally fixed on by the pursuers and their witnesses, is now found by them not to answer their purpose, for which reason they have abandoned and given it up.

In the first place, it was not attended to by them, that Madame Mignon having only been delivered on the 28th June, must have had a surprising recovery, if she was able on the 10th July to travel on foot from her own house to the church of *Notre-dame*, about three miles of street, with her child in her arms, and to make the same journey, and in the same manner, on the 11th. The pursuers thought it remarkable, that Lady Jane Douglas should have been in a condition, on the 10th day after child-birth, to be removed from one house to another in a coach, and yet they supposed, that this woman, Mignon, might be travelling about on foot for miles together, with her child in her arms; and some of the witnesses say, they saw this child several Def. p. 681, D. times in his mother's arms before he was taken away. 2dly, The sup- —683, E. position.

position of Sir John Stewart's having carried off this child on the 11th, is totally inconsistent with the plan which they have at last been obliged to adopt, with regard to the different places of abode of Sir John and Lady Jane, when in Paris, the not writing to the servant-maids till the 22d, and various other particulars now insisted in by them.

For these reasons, they were obliged in the pleading, to give up the depositions of Mignon and his wife, upon this chief article *of the time*, and to lay down the following hypothesis, " That Sir John, Lady Jane, " and Mrs. Hewit, remained constantly in the house of Godfroi, till " the morning of the 14th; that, from the 14th to the 18th, they were " sequestered in some private house in Paris, hitherto undiscovered; that " they completed the enlevement on Thursday the 18th, and took " their lodging at Michelle's that same night, but matters not being " yet prepared for bringing the child to that house, they placed him " for a single night in some other house in Paris, and next day, hav- " ing picked up a nurse on the street, they brought the nurse and child " together to Michelle's;" and this account of the matter, they think, will also correspond with the circumstance mentioned by some of the witnesses, of Mignon and his wife having appeared with new cloaths at the feast of St. Clair, on Monday the 22d.

It will be observed, that this hypothesis is contradictory to an allegation formerly made by them, that Sir John, Lady Jane, and Mrs. Hewit, after entering to Michelle's, went to *a village in the country*, to bring a child which they had there at nurse, and did actually bring one, who appeared to be *several months* old. But, taking the fact according to their present manner of stating it, the memorialist apprehends that it will answer their purpose equally ill with an enlevement upon the 11th. In the first place, it is contrary to the positive, though false averment of their own witnesses, that Mignon's child was carried off on the 11th, and there is still less proof for making it the 18th than the 11th. 2dly, The whole Mignon witnesses agree, that the child, when taken away, was strong, healthy, and in good condition.

Purs. pr. 711, The woman Edouar says, " That he appeared to be in very good A.

—713, B. " health." Odoneau says, " That he was a large and a fine child."

—719, A. Madame Dumont, " That he was a fine child, very strong, and his " face round and plump;" and sundry other witnesses depose to the

—746, E. same purpose. The woman Mignon herself deposes, " That the " child was strong and robust, and that one would have reckoned him " three months old when he was carried away." The meaning of this addition is extremely plain: the pursuers had set forth in the Monitoire, that the child picked up by Sir John Stewart, was not a new-born child, but several weeks, or even *months* old; it was necessary, therefore, not only to say that he was

a strong healthy child, but to make him look *three times older-like*, than he really was.

But the defender, when brought to Michelle's, had a very different appearance, as deposed to by that family, and by Blainville; they all describe the child as very *low* and *weak*, from bad nursing. Blainville says, that she undressed the child, "and he appeared to her to be languishing and of delicate health;" and the nurse Favre says, "That he was in a piteous condition, and that he had suffered very much."

Now, it is in the nature of things impossible, that the strong and healthy child of Mignon should have been reduced to this miserable state by having wanted the breast, or had a bad nurse, for one single night; and therefore, the identity of the two children is disproved by this circumstance, deposed to by the pursuers own witnesses. Besides, where was the occasion to secrete the child for the first night? or what proof is there, that any such thing was done? If Sir John and Lady Jane were the persons who carried off the child of Mignon, they could have brought him to Michelle's along with them, when they entered to that house, just with the same ease as afterwards. The nurse Favre deposes, "That when the child was given to the deponent, he might be three weeks or a month old: that he was then in so bad a condition, that one would not have reckoned him eight days old, but that the red colour, which new-born children generally have *for eight or ten days*, was not upon him; and that his belly was no longer tied round with bandages, in which condition children are kept until the navel-string falls off; and that the child was past that time." This passage makes no way for the pursuers; for the witness herself says, and the fact is certain, that the appearances mentioned by her go off in eight or ten days, and, consequently, the description here given is perfectly applicable to the state which the defender may be supposed to have been in on the 21st or 22d of July, when first seen by the nurse Favre.

With regard to the mark taken from the feast of St. Clair, nothing can be more uncertain. These feasts and holy-days happen so often in France, that people are extremely apt to mistake one for another, a remarkable instance of which occurs in the deposition of Abbé Oneil, who, from his profession, ought to have been more attentive to these festivals of the church. He was examined as a witness for the pursuers, to prove at what time Sir John Stewart and his family set out from Reims for England, and he has sworn very pointedly, that he visited them at Reims upon the 2d of December 1749, on which day, being the feast of St. Francis Xaviere, he had come from the country to dine with the Jesuits, and having called on Sir John and Lady Jane,

Purf. pt. 849,

859, G.

865, G.

879, A.

881, C.

762, H.

he found them at Madame Mayette's, just returned from Paris with Sholto; whereas, it is now a fact acknowledged on all hands, that they left Reims on the 29th November.

These witnesses, therefore, may have had some other feast in view which happened subsequent to the month of July; and what makes this the more probable is, that some of the witnesses have expressly said, that the child was several months old when carried off. John Warin depones, "That he often saw the child with his mother." Further depones, "That by the time he saw the child in the street with his mother, he judges, according to his idea, that when given away, he might be about *three or four months* old, not having given attention to a thing he had no concern in." François Warin depones, "That he judges that Mignon's child was three or four months old when it was given away, as well by comparing his age with the deponent's daughter, as by having heard it." Madame Jambon depones, "That she saw this child once or twice, at most, before he was given away, in the arms of Madame Mignon, his mother, who sold biscuit in the same street where the deponent sold fruit. Depones, that, so far as she can recollect, this child, when she saw him, might be about two months old, which she judged, by comparing him with a child, which she, the deponent, had, who was about the same age."

The whole of these witnesses belonged to the glass manufactory at the time, and were well acquainted with Mignon and his wife; they had likewise the same opportunity with the other witnesses of remarking the æra of the feast of St. Clair, and yet they do not remember any such circumstance. Even their own witness, Madame Oduneau, makes the child to have been six weeks old, which brings the enlevement further down than the feast of St. Clair.

There is indeed one epoch fixed for this enlevement, by a circumstance inadvertently deposed to by Madame Mignon herself, which, as it is confirmed by written evidence, is the only one that can reasonably be depended on; but this epoch seems to bring it to a period long subsequent to July 1748. She says, *the very day* of giving away her child, and before she had carried him to the church of Notre-dame, "She caused say a mass at the Saint Esprit, to know what God would inspire her with," and that she afterwards caused say other masses for his recovery at different churches. Now, it appears from the register of masses, produced by one of the sacristans of the hospital de Saint Esprit, that on 10th March 1749, Madame Mignon's name is entered for a mass, "*To implore the light of the Holy Ghost,*" which answers precisely to what she herself says, of applying for *inward light or inspiration*. It is true, there are a variety of prior articles

cles in this register, in the names of *Jacques Louis*, and *J. Louis*, but your Lordships will observe, that this is one of the commonest names in Paris; and from the extract produced it appears, that during the whole years 1748 and 1749, from the month of January 1748, downwards, there are masses in the name of *Jacques Louis*, from which nothing can be inferred, but that persons of that name have applied for masses to be said for them. But there are only three articles in which Mignon's wife appears. The first is of the date above mentioned, the second is of date 26th July 1749, and the third 4th October that year.

From these considerations your Lordships will judge, how far the pursuers have brought sufficient proof, or indeed any proof, of this first and most material ingredient, the supposed co-incidence in time.

And with regard to another circumstance founded on, viz. that the gentleman made mention of his wife's delivery of *twins*, it is in itself ^{2. Mention of twins.} inconclusive, though it were proved, but the memorialist begs leave to say, that this fact must undoubtedly have been taken from the *Monitoire*, and other papers, by the Mignon witnesses who have sworn to it, as they saw from thence, that two children were wanted, though one only procured at that time. Some of the most credible of these witnesses, and particularly Madame Odeneau, the landlady, appear to have been ignorant of any such circumstance; and it is by no means probable, that the gentleman, whoever he was, if he intended to carry off another child, would have discovered his intentions on that head, to Mignon and his wife. It has been clearly shown, that the epoch of the 10th and 11th July, was taken from the *Monitoire*; and the memorialist is intitled to presume, that every other circumstance of application was in like manner borrowed.

The third circumstance, from which an application of this story ^{3. Description of persons.} was endeavoured to be inferred, was the description given by the witnesses, of the persons concerned in the enlevement. From the *Monitoire*, and private memorials, the Mignon witnesses had a pretty good directory with regard to Sir John Stewart and Lady Jane Douglas; the age, country, and quality of the latter, having been pointed out in the *Monitoire*, together with the circumstance of her pretending to be in child-bed, and Sir John's age having also been mentioned in one of the printed memorials; but as to Mrs. Hewit, they seem to have been more at a loss, for the only circumstance pointed out with regard to her, was that she was a stranger, as well as the rest. The lady supposed to be in child-bed, they had no occasion to describe; as to Mrs. Hewit, they have gone entirely wrong; and even, with regard to the gentleman, they have fallen into great mistakes in their description, if intended, as it certainly was, to apply to Sir John Stewart,

Stewart. It has already been said, that they came back a second time to the curé to give these descriptions, which, it seems, they were not well enough prepared to give on the first revelation, though they thought proper to deny this fact in their depositions. What description they gave to the curé is not known, but in their depositions Mig-

Purs. pr. 753,
G.

non says, "That the gentleman was taller than the deponent; that he was at least five feet, one or two inches high; that his face was white, and a little sun-burnt, his eye-brows fair, and his eyes blue; he had a wig with a bag, so far as the deponent can remember, a plain coat, of cinamon-colour, a plain hat, fine, with large brims; he appeared to the deponent to be fifty-five years of age, and the deponent does not think he was sixty." Madame Mig-

746, F.

non says, "That the gentleman was a little taller than the deponent's husband; that he appeared strong in his make; that he had a plain chesnut-coloured coat, wore a wig, she does not know if it was in a bag or otherways, and had a plain hat with large brims; his face was white, but a little sun-burnt, was well looked, and pretty full; that she reckons the gentleman was aged from fifty-five to sixty; that she judged by his language that he was a stranger, without knowing of what nation."

848, I.

The families of Michelle and Favre gave descriptions of Sir John a good deal different, Madame Michelle depones, "That the gentleman appeared to be *from sixty to sixty-five years of age*; that he was tall, strong, and well-made, wore a coat of chesnut colour, *with gold buttons*, and a round-wig [*un perruque en bonnet rond*] of a yellowish

858, F.

colour." Michelle, the husband, says, "That the gentleman appeared to be *sixty-four or sixty-five years of age*; that he was tall, strong, of a good mien, wore a coat of chesnut colour, with a gold

869, D.

button, and an old wig, which was yellowish, and in a bag." Ma-

876, F.

dame Blainville gives much the same description. Brevall, who shaved and dressed him, says, "That the gentleman appeared to be *from sixty to sixty-five years of age*; that his beard and his hair were very white, and in small quantity; that he had a fresh air; that his skin was white, and of a fine colour, and his cheeks of a vermillion colour; that his humour was gay; he was *five feet, five or six inches tall*, (i. e. above six feet English measure,) or thereabout; and of a strong make; that he wore a *grey ash-coloured coat*, and a bag-wig."

882, B.

Favre, the nurse, depones with regard to the gentleman, "That he appeared to be *from fifty-five to sixty years old*, a little taller than Mr. Dou-tremont, here present, pretty strong made, in good health, and his face high coloured; that while the deponent saw him, he wore generally a *red surtout coat, with a little lace on it*. The deponent does not remember what he wore below this, only she knows, that he gave one of his

" coats,

" coats, which was of a chefnut colour, to the deponent's husband." Favre, the husband, depones, " That every time he saw the said gentleman, he wore a *red furtout*, but that he did not observe the cloaths which he had below it.—Depones, that the gentleman gave to the deponent one of his coats, of droguet, of a cinamon or clear coffee colour, *with a gold button, and lined with white tafta.*"

Def. pr. 591,
F.

592, A.

These last descriptions do not correspond with those given by the Mignon family, either in the age, stature, or particulars of dress, further than that Sir John is said to have had a droguet coat of a *cinamon* or clear coffee colour, which he gave in a present to the husband of nurse Favre; and the Mignon family say, that the person who took away that child wore a coat of a cinamon or chefnut colour. With regard to this, it is somewhat remarkable, that even the Sanry witnesses, as will be mentioned in the sequel, have fixed upon this very colour, for the dress of the gentleman who carried off their child in 1749, though it is morally certain, that, supposing Sir John to have been the person concerned in both enlevements, his coat in the 1749 must have been different from what he wore in 1748, because he had given away the last mentioned coat to Favre, before leaving Paris that year; and the only evidence which appears with regard to his dress in 1749, is what is sworn to by Mrs. Hewit, that he had a mix-coloured Reims's stuff, which he wore about that time. The memorialist cannot help suspecting, that, as the colour of cloaths was a material article in the description, both the Mignon and Sanry witnesses have taken the hint of a *cinamon colour*, from what they knew the Michelle people had said or were to say upon that head, without adverting that it would not answer the purposes of the Sanry enlevement, unless it were to be supposed, that Sir John dealt so much in the cinamon colour, as to get a new coat of the same kind, after giving away the old one to the nurse's husband.

Pur. pr. 258,
K.

But, independent of this observation, your Lordships will remark a variety of discrepancies in the dress, as described by the Mignon and Michelle witnesses. The coat mentioned by the Mignon family appears to have been quite plain and uniform, whereas the coat, given to Favre, had gold buttons and a white lining.—Besides, Sir John's usual dress at that time is said by the nurse Favre and her husband to have been the red furtout, with lace upon it, which in France is a sort of frock, wore with a waistcoat, and without any other coat; and, with regard to the cinamon coat, if Sir John did really carry off the child of Mignon, and if he wore that coat at the time, your Lordships will judge how far it is in the least degree probable, that he

would have left it in the hands of a person living in Paris, as a mark by which he might be afterwards traced and discovered.

In short, none of the circumstances of the gentleman's description apply with any degree of exactness to Sir John Stewart, except that he was an Englishman. This the witnesses had an opportunity of learning from the Monitoire; but the cause of knowledge, assigned by Mignon upon this head, is a very ridiculous one. Depones, "That he could not distinguish the English from all other strangers by their language, as he does not know the difference of languages; that neither could he distinguish them by their face, their air, or their persons; that he could distinguish them better by *their cloaths*; that the only manner by which he could distinguish by their dress is, *that they wear little hats, sleeves en botte, and cloaths of a bluish colour*; that the deponent remembers he said to the curate of St. Marguerite, and several others that these persons were English, *because they did not speak French*;" yet, when examined with regard to the gentleman's figure, he says he had a wig with a bag, a plain coat of *cinamon colour*, and a hat, *with large brims*. Mary Guynet says, her mother told her, "That the gentleman had the air of a *Mi-*
 —753, H. lord Anglois, *for he spoke like a foreigner*." How far this was sufficient to make him an Englishman, your Lordships will judge.
 —710, E.

But whatever apparent similarity there may be between Sir John Stewart and the gentleman described by Mignon, it is perfectly clear, that the lady, who is said to have been concerned in the enlevement, was neither Lady Jane Douglas nor Mrs. Hewit.—The descriptions uniformly given of them by the families of Michelle and Favre are, that Lady Jane was very sickly, pale in the complexion, delicate and thin, her head and neck always muffled up, so that if she had used powder, it could not possibly have been seen. Mrs. Hewit, they describe as an oldish woman, very big and strong, and like a man in woman's cloaths. Madame Michelle depones, "That the lady appeared to be thirty-five or thirty-six years of age, was very tall and thin, extremely white, dressed in a blue gown in the English fashion, with a large napkin, which covered her shoulders; that she was of a fine figure, and had a sickly and melancholy air. Depones, that the lady, who was her attendant, was tall and very strong-made, had the air of a man in disguise, and was dressed in brown, also in the English fashion; the deponent does not remember of what age she might be, and the head-dress of these two ladies was in the English fashion." Michelle depones, "That one of the two ladies, who was the gentleman's wife, appeared to be thirty-seven, thirty-eight, or thirty-nine years of age, pretty tall, but very thin, and dressed in a blue gown; that she was white and very pale, and had a sickly air,
 —849, A. "when
 —858, F.

“ when she arrived at the deponent’s hotel ; believes that she was dressed rather in the English than in the French fashion, and her head-dress *en negligé*, as a person indisposed ; that her breast was very flat, and covered with a large napkin. Depones, that the other lady appeared several years older than the gentleman’s wife, was almost as tall, but of a much stronger make, having a large breast, a brown complexion, and rather the face of a man than of a woman, and that she was dressed in a brown gown, and her head-dress *en negligé*, as a burgher’s wife, much like the other lady.” Blainville, Favre, &c. concur in giving similar descriptions of the two ladies, they all agree in making Mrs. Hewit a masculine strong-made woman, towards fifty years of age ; and Blainville says, “ That the head-dress of the ladies was such as did not show their hair.” It is also a fact clearly proved, that Mrs. Hewit was totally ignorant of French, and never in her life could speak a word of that language. Now, your Lordships will observe the description given by Mignon and his wife of the lady who is said to have been concerned in the enlevement, in giving which description they could not have in view Lady Jane herself, as she was said to be in child-bed ; but rather the *female companion*, Mrs. Hewit. Madame Mignon depones, That, when she went the second time to the gentleman at Nôtre-dame, “ he was with a lady well dressed, aged *thirty-four or thirty-five years*, or thereabouts, a little taller than the deponent, and well built.” In an after part of her oath, she says, that having another of her children along with her, a boy of six years of age, “ the lady said in French, *voilà un beau petit garçonnet*,” (there is a fine little boy).—She next proceeds to mention, that the gentleman and the lady having spoke together in their own language, the deponent asked the gentleman what the lady was saying, and he told the deponent, that the “ † *Mademoiselle* was saying to him, that the child resembled him, &c.” Towards the end of her oath, she again describes the lady as “ somewhat taller than her, the deponent, of a proper bigness, her face full and white, as the deponent has already said, of about *thirty-four or thirty-five years*, her cloaths and head-dress of the *Paris fashion* ; and the deponent did not hear her speak French, except the words already mentioned, she having spoke the rest in a foreign language, which the deponent did not understand ;—that she could not see the colour of the woman’s hair, because it was all filled with powder.”

Mignon, the husband, concurs with his wife in saying that the lady spoke in French to the young boy who was along with them, calling him *un beau petit garçonnet*, and describes her as follows: “ That she

† Mademoiselle always means an unmarried lady.

“ she was white, pretty fat, had a good air, and was * nearly as tall
 “ as the gentleman, and appeared to be *thirty or thirty-five years of age*
 “ at most ;—remembers that she had a white petticoat with falbalas,
 “ and does not remember of what colour her gown was ; her cloaths
 “ and head-dress were *entirely like a stranger*, and not in the fashion
 Purf. pr. 755, “ of a lady of Paris.”—And in an after part depones, “ That he did
 B. “ not see the colour of the woman’s hair, *because it was powdered.*”

Not a circumstance of this description applies to Lady Jane Douglas, except the speaking French. Neither does the description apply to Mrs. Hewit in age, dress, height, the language spoke by her, or in any circumstance, except being somewhat plump or fat ; and even *there*, your Lordships see no traces of that robust, masculine appearance, which led the Michelle people to think that she resembled a man in disguise. The head-dress too, and quantity of powder in her hair, denote some person entirely different from Mrs. Hewit.

In this material article therefore of the identity of persons, the pursuers have not only failed in proving a description similar in any degree to Lady Jane Douglas or Mrs. Hewit, but they have proved that, if any woman was concerned in the enlevement, it was a woman quite different from either of these persons ; and they have even failed in assimilating the gentleman to Sir John Stewart, though, as to him, the witnesses had opportunities of being much better informed.

Discrepancy as
to child.

But further, upon this head of identity, your Lordships will observe, that a most remarkable discrepancy appears in the accounts given of Mignon’s child and of the defender.

The memorialist has already observed one circumstance in which they differ, viz. the strength of Mignon’s child when taken away, and the weakness of the defender when brought to Michelle’s. But this is not all ; it is in proof that they differed totally in colour and complexion ; that Mignon’s child was *white in the complexion, with fair hair and blue eyes* ; whereas the defender was from the beginning of *a dark complexion, and black eyes.*

Purf. pr. 742,
G.

Mignon, the wife, depones, “ That her child had blue eyes, a white complexion, and fair eye-brows.” And this is confirmed by all the other witnesses—That the defender was from the beginning of a contrary complexion is proved by a variety of witnesses.—Madame Mailfer

Def. pr. 603,
A.

says, the child brought to Reims “ was brown, and had *large black eyes* and brown eye-brows.”—Mr. Mailfer gives much the same account.

—151, E.
—66, F.

He says, the eyes were of a dark colour, [*brun noirs*]. Isobel Walker affirms, that the colour of his eyes and complexion, when brought

* The French expression is, *Qu’elle étoit gueres moins grande, qua le Monsieur.* The Michelle witnesses say, that Sir John was, *beaucoup plus grande*, much taller than either of the ladies ; which was the fact.

to Reims, was *quite dark*. Mr. Murray, with whom Lady Jane Douglas lodged, upon coming to London, depones, "That, to the best of his remembrance, the child Archibald had *full black eyes*." And other witnesses concur in the same fact. Def. pr. 410, C.

Nay, the pursuers themselves did originally assert, in their plaintes and private memorials, drawn up before the discovery of the enlevement of Mignon's child, that, from the enquiries they had made, the eldest child had black eyes and a brown complexion; and they found——1027, E, G.
—1029, C.
—1023, E. ed upon this as an argument against the birth, the one twin, viz. Sholto, having blue eyes and a fair complexion, and the other black eyes and a dark complexion.—The words of the plainte, 17th December 1762, are: "They accordingly took him (*i. e.* Sholto) with them "to Reims, where it was remarked that he bore no sort of resemblance to the eldest son, who was strong, having a brown complexion and *black eyes*; and the other was fair, weak, and blue eyes."—The words of the memorial, December 1762, are: "That the eldest was very brown, had *black eyes*, and was big and strong: "that the youngest was white, had blue eyes, was small, and of a "much less size than his brother." —738.

This is a pinching circumstance, and, in order to account for it, the pursuers have examined some people, with a view of proving, that the colour of a child's eyes is not easily discernible, and that the complexion some times changes, from fair to dark. It is observable too, that some of the Mignon witnesses, though they are obliged to admit, that the child's eyes were quite blue, are pleased to add, of their own accord, without any such question being put to them, that eyes some times change. For example, Madame Burgeois, interrogate for the defender, depones, "That she has several times seen the child of Mignon, who was given, as aforesaid, that he had blue eyes; and the "deponent observes, that some times the eyes of very young children "change the colour." Madame Odoneau, in her oath, above recited, swears positively, That the child had blue eyes, and was fair; and adds, That childrens eyes change, and that her own did so, *when she was twenty years of age*. Purs. p. 717, B.

This is another proof of the influence, under which these witnesses deposed; for why should they have added any explanation of that sort, if they had not been anxious to reconcile a circumstance, which they saw made against the pursuers? But the supposition of the defender's having undergone a total change of complexion, and colour of eyes, in the compass of two or three weeks, from the time of his supposed enlevement, to his appearance at Reims, is too ridiculous to be seriously thought of. It is true, that hair some times alters in a course of

years, from fair to a darker shade; and even eyes will, in length of time, change from a fainter to a darker colour of the same kind; for example, blue eyes some times turn to a deeper blue, and brown eyes to a darker brown; but that blue eyes should turn black, or black eyes blue, and that too in the space of three weeks from a child's birth, is a metamorphosis which has never yet occurred.—It may also be true, that the colour of a child's eyes is not so easily distinguishable, as that of a grown person; but there can hardly be any difference, in this respect, between a child, a fortnight or three weeks old, and one of the age of five or six weeks. The whole Mignon witnesses have affirmed, in the most positive manner, that the *eyes* of their child was *blue*, and his *complexion fair*, which fact they could not have asserted, if they had not actually distinguished the colour; and it is no less clearly ascertained, that the defender, when brought to Reims, had *black eyes*, and a *dark complexion*.—The pursuers therefore must suppose, that so strange and sudden an alteration must have happened during the short time they were at Michelle's, or on the road, if the children were the same, a thing altogether impossible to be conceived.

Another pretty material difference appears between Mignon's child and the defender, in the article of dress. All the Mignon witnesses describe the child-bed linen, in which the gentleman and lady dressed the child, as remarkably superb and fine, in so much, that it might have served a Dauphin; and some of them say, it was well worth 1000 livres. See Mary Guynet, Madam Burgeois, Madame Dumont, Madame Sommet.—The defender's dress, on the other hand, when brought to Michelle's, appears from the depositions of that whole family, to have been plain, and noway remarkable.—Isobel Walker depones, "That she and Effy Caw did make for Lady Jane, before she went to Paris, cloaths for a child, and that these cloaths were mostly made before they came to Reims; that the cloaths were such, as any gentleman would provide on such an occasion; that they were not remarkably fine; that they were of cambrick, with a narrow edging." And Madame Michelle depones, "That she saw the child's cloaths, and did not observe any thing extraordinary in them, and that the linen which he had on his head was common linen."

Favre, the nurse, talks of the bit of narrow lace on the caps as very fine, but she must have thought all the rest of the dress no better than ordinary; for she deposes, That when at Dammartin, she advised the ladies to give the child's cloaths, except the lace on the caps, which was very fine, to the child of the nurse, Mangin, and to purchase new ones for the defender, which was accordingly done, the caps being reserved.

The memorialist thought it the more necessary to point out this difference in the dress, that, in the pleading, one of the council for the pursuers, entertained your Lordships with a criticism upon a particular part of the evidence, from which he endeavoured to show a similarity between the defender's dress, as described by the nurse Favre, and the dress of the other child, described by the woman Mignon. The import of the observation was, that the nurse, Favre, when she took the charge of the defender, was surprised, at finding a particular part of the dress composed of a piece of old blanket, of much inferior quality and appearance to the rest, and that in fact, this very blanket had been left upon the child by Mignon, the mother, when she delivered him over to the strangers, and when all the other parts of the dress had been changed.—The memorialist shall, in the first place, lay before you the two passages, *verbatim*, as they stand in the French original, after which he will endeavour to show, that their true sense and meaning has been totally misunderstood, and that in reality they establish a manifest difference between the two children.—

Madam Favre, the nurse, depones, “ * Que l'enfant avoit du fort beau
 “ linge et des dentelles magnifiques sur ses brassières et sur ses cornettes ;
 “ et qu'au lieu des langes de futaine par dessous, et de moleton par Purs. pr. 140,
 “ dessus, et qui sont l'usage pour les enfants des gens comme il faut, L.
 “ il avoit des langes de linge piqué par dessous, et un lange de cou-
 “ verture de laine par dessus.”—In another place she says, “ Que la —141, F.
 “ plus part des dentelles sur l'enfant, dont elle a parlé ci-dessus étoit
 “ de maline d'environ un pouce de hauteur, et qu'il y en avoit une
 “ partie de ce qu'on appelle ici, Dentelle d'Angleterre.” And in the close —p. 143, E.
 of her oath ; “ Que l'enfant n'avoit point de langes de futaine, et qu'il
 “ n'avoit point de lit, ni de berceau, qui ait été remis à la déposante,
 “ mais que la déposante lui en fournit un qu'elle avoit chez elle.
 Madame Mignon depones, “ Que le Monsieur ayant apporté une —226, L.
 “ layette

* Nurse Favre depones, That the child had fine linens and magnificent laces upon his waistcoats and upon his caps ; and that, in place of swaddling-cloaths of fustian below, and of flannel above, which it is usual for the children of people above the lower rank to have, he had swaddling-cloaths of quilted linen below, and a swaddling-cloath of blanketing (or woollen) above.—Depones, That the greatest part of the laces upon the child above mentioned, was Flanders lace, about an inch broad, and that there was a part of it of that sort, which is here called dentelle d'Angleterre (Brussels lace)——Depones, That the child had no swaddling-cloaths of fustian, and that he had no bed or cradle which was given to the deponent, but that the deponent furnished one to him which she had in her house.

Madame Mignon depones, That the gentleman having brought child-bed-cloaths to dress the child, which consisted of a waistcoat of linen, and another of fustian, child-bed-linen, and swaddling-cloaths, and every thing necessary for dressing a child, the deponent observed, that, in place of a quilted swaddling-cloath, they had only brought one of double linen, like a pillow-case ; upon which she said, that it was not sufficient to support the reins of her child ; upon which the deponent put (on the child) that which she had brought, and put on him a band of her own, because it was stronger than theirs for supporting the reins of the child.

“ layette pour habiller l'enfant, qui consistoit en une brassière de toile,
 “ et une autre de futaine, couches, et langes, et tout ce qu'il faut pour
 “ accommoder un enfant.—La déposante remarqua, qu'au lieu d'une
 “ lange piqué ils n'avoient apporté qu'un linge double comme une tête
 “ d'oreiller, sur quoi elle dit, que ce n'étoit pas capable de soute-
 “ nir les reins de son enfant, sur quoi la déposante mit celui qu'elle
 “ avoit apporté, et lui mit une bande des sienne, parce qu'elle étoit
 “ plus fort que les leurs pour soutenir les reins de l'enfant.”

The way in which these passages were explained by the pursuers counsel, was as follows: He supposed, that Madame Mignon having complained that the swaddling cloth, or wrapper, which was to go round the child's belly, for supporting his reins, was too weak for that purpose, being composed only of double linen, like a pillow-case, whereas, it ought to have been of quilted linen, she, in order to supply that defect, insisted to put on her own *swaddling-cloth*, which *probably* was of *quilted linen*; and, in order still better to support the child's reins, she put *another band* of her own above the quilted linen; and this upper band, say the pursuers, was *probably* some dirty rag, such as a piece of *blanket*: that, accordingly, the nurse Favre, in her description of the defender's dress, says, that, in place of swaddling-clothes of fustian, below, and flannel, above, which are generally used by persons above the lower rank, the child had only quilted linen below, and a covering of blanket or woollen, above.

But, 1mo, The whole of this criticism proceeds on three conjectures. 1st, That the under-covering put on the child by Madame Mignon, was of quilted linen. 2dly, That the upper-covering, or band, supposed to have been also put by her round the child, was a piece of blanket; neither of which are said by Mignon herself. And, 3dly, That the coverings of quilted linen and woollen, observed by the nurse Favre, were of *inferior quality*, which is not said by the witness.

2do, The pursuers are entirely in a mistake, in supposing, that the woman Mignon put on two different coverings of her own, one above, and another below. The deposition is indeed inaccurately taken down, and, at first view, might seem to give room for such a construction; but, in fact, the woman meant nothing else, than that she had put on a swaddling-band, or covering, of her own, which she thought stronger and fitter for supporting the reins of the child, than the double linen. The words *bande de sienne*, are no more than a repetition of the same thing, which had already been expressed in the former part of the sentence. All that she had complained of, was the want of a proper
 swaddling-

swaddling-cloth, or under-garment, next to the child's skin, for supporting his reins; but as to every thing else, she expressly says, that the gentleman had brought waistcoats and coverings, and child-bed linen, of every kind, suitable for the purpose; so that there was no occasion to use any *dirty rag*, which she may have had, as an upper-garment for the child. From Mr. Stewart's journal it appears, that, according to her own private account of the matter to himself, there was only *one piece* of the body-dress which she rejected as insufficient, viz. *the double linen*. The words of the journal are these, * " Elle nous a dit ^{Purf. pr. 1107,}
 " de plus (comme circonstance) que dans les nouveaux habillemens,
 " qu'on avoit donné à son enfant, après lui avoir oté celui qu'il avoit,
 " elle avoit rejeté, comme insuffisant et dangereux, une espèce d'en-
 " velope de toile, au lieu du lange piqué (c'est une toile double ou
 " triple) dont on se sert ordinairement pour les enfans, et qu'elle avoit
 " voulu qu'on lui conservât son lange piqué, comme plus sûr, pour
 " lui soutenir les reins, en l'envelopant plus solidement que la toile
 " simple, qu'on y vouloit substituer.—Elle lui conservat pareillement
 " son beguin, attendu que la coëffure, que ces étrangers avoient apporté,
 " n'avoit point de bride pour être contenuë sous le menton de l'enfant."
 —Had there been an upper-covering, or band, besides the under one, this would certainly have been mentioned to Mr. Stuart.

3tio, If two different things were meant by the witness, which the memorialist is confident was not the case, it is plain, that this band could be nothing else than a sort of garter or belt, tied round the child's waist, for the purpose of keeping the swaddling-garment tight about his body. It is plain from the words, inaccurate as they are, that a separate upper-garment was not meant. The witness, after observing, that the double linen was not sufficient for supporting the reins of the child, says, that she put on the swaddling-garment which she had brought, and put her own band about the child, because *it was* (parceque *elle étoit*) stronger than theirs, for supporting the reins of the child. The single thing in view was to support the reins of the child, and she does not say that she had two garments or coverings stronger than theirs, for that purpose, but talks only of *one*, in the singular number.

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4to,

* She told us further, (as a circumstance) that among the new cloaths which were given to her child, after having taken from him those he had; she had rejected, as insufficient and dangerous, a sort of wrapper of linen, in place of quilted swaddling-cloaths, (i. e. a piece of linen two or three fold) which are ordinarily made use of for children, and that she caused them keep his own quilted swaddling-cloaths, as firmer to support the child's reins, by wrapping him tighter, than the plain linen which they wanted to put in the place of it.—She also made them preserve his former cap, as those which the strangers had brought had no band for tying under the child's chin.

4to, Though the nurse Favre says, that the upper-covering, or wrapper, round the child's body, was of *couverture de laine*, it does not from thence follow, that this was a dirty piece of blanket, such as may be supposed to have made a part of the dress of Mignon's child.—*Couverture de laine* signifies, any covering of woollen; and, it is believed, that this is just as common, and as proper, for the dress of a child, as a covering of flannel. Had it been a dirty rag, such as the pursuers are pleased to suppose it, the nurse Favre, and every other person who saw the child, must have been struck at once with a circumstance so peculiar, and so different in stile from the other dress of the child; neither could there be the least reason for continuing it as a part of the child's dress, when it appears that they had a variety of *langes*, *couches*, and every thing proper for the child.

5to, It is plain, from comparing the two descriptions, that a variety of differences appear between the dress of the one child and that of the other. The nurse Favre, not only in the passage above quoted, Purf. pr. 143. E. but in another part of her oath, says expressly, that the child had no 855, C. *langes*, or coverings of *fustian*; whereas, Mignon says expressly, that a part of the child's dress, brought by the gentleman, consisted of a *waistcoat of fustian*. And, further, your Lordships will observe, a most remarkable circumstance in the passage above quoted of Mr. Stuart's journal, viz. That Madame Mignon, besides the swaddling garment, insisted also, that the child's former *cap* or *head-dress* should remain, because it tied under the chin; whereas, the caps brought by the gentleman, were not made in that form. Now it is clearly in proof, by the deposition of the nurse Favre, in the passage above quoted, that the defender's cap or head-dress, when brought to Michelle's, was not of that coarse or dirty species, which the son of Mig- 143, E. non must be supposed to have wore; but is remarked by her for its fineness, and appears to have been edged with a narrow lace, made up in a foreign manner.

The whole of the descriptions therefore of persons concerned, of the child, and of his dress, are such as can in no shape apply to the defender. Indeed, a more absurd, improbable, and contradictory story, never was presented to any court, than the account given in general by Mignon and his wife of the circumstances of this enlevement. They pretend, they knew the gentleman and lady to be English people, for a reason which contradicts their assertion. They pretend, they only lent their child for a few weeks, and were much disconcerted when they found they had lost sight of the strangers; and yet the very reason of agreeing to give him away, was to make the child's fortune, which could not well have happened, if the child was to be restored. 747, H. Mignon, the wife, depones, "That she never asked nor knew the names,

names, nor the abode of the gentleman above mentioned, nor of the lady, *because they would have deceived her*, and would not have declared their names, intending to carry off her child. And, in explaining herself, depones, That at that time she did not ask his name, *because she believed him an honest man*, and that he wanted the child only for six weeks or two months; but that it is since the loss of her child, that she made the reflection; that he would have deceived her, if she had asked his name and abode." They say, they did not ask at the gentleman or lady their names, or place of residence, *because they supposed them to be honest*, yet, the husband was at the pains to bring a change of dress along with him, for disguising himself, in order to trace where the child was carried. How did he know before-hand, that this would be necessary? And is it not highly affected, and improbable, that when he saw the coach drive off quickly, as the witnesses say, and when he could have followed at a little distance in his own cloaths, without being seen by the persons within the coach, he should, nevertheless, have waited to throw off the dress, which he then wore, and put on his disguise; and that after all he should have kept up with the coach, and, yet, when the coach stopt, and the persons in it went into an entry or passage, he, in place of going to observe where they went next, should have gone in to refresh himself with a little wine in a cabaret.—He says, after coming out of the cabaret, he went into the passage, which, to his surprise, he found to be a thorough-fare to another street, by which he saw he had lost sight of the strangers. His wife however says, he came home, and told, that he had marked the place where the strangers lived; and it was only the next day, that he went to the passage, and found it was an entry to another street.—He talks of having gone up a stair in this passage, and made enquiries at the people who lived in the first storey; and both he and his wife pretend, that a variety of enquiries were made by them at midwives, and others in the neighbourhood. In fact, there is not a stair in the whole passage, and there is not the least vestige of evidence, brought either by midwives, or others, that enquiries were ever made.

It is said by one of the witnesses, that the gentleman returned *next morning* to the gate of Notre-dame, in order to inform Madame Guynet that his wife was very happy with the child. Your Lordships will judge how far Sir John Stewart, had he been the guilty person, would have run such imminent danger of instant detection, and of having the child again taken from him, by presenting himself to the persons from whom he had stole it, the very day after committing the theft. Indeed it is an astonishing circumstance that Sir John and Lady Jane, if they were the thieves of this child, should have continued for more than

Parl. pr. 755,
C.

Purf. pr. 744,
L. than a fortnight thereafter, to reside in a publick hotel in the city of Paris, appearing in publick at different times, as the pursuers have endeavoured to prove, and Sir John constantly walking about the streets, and going to coffee-houses. Had Mignon and his wife made enquiries, and had they stood watching on the Pont-neuf, as they pretend, it is incredible that they should not have met with, or got some intelligence of the strangers who had carried off their child.

The memorialist, however, submits to your Lordships, that there is not even sufficient evidence that a child was carried off in the way and manner deposed to by the Mignon witnesses, far less that such child was stole by Sir John Stewart and Lady Jane Douglas. From a certificate produced of children exposed, and carried to the *Enfants-trouvés*, in July 1748, it appears, that there were twelve of them in whole, and one of these is a male child, aged three weeks, found on the 20th July, on the road to the *Hameau d'Alfort*, not far from the place where Mignon lives. The age answers precisely to his child; and your Lordships may either suppose that he exposed the child himself, and with the assistance of Guynet and Edouard, invented the story of the enlevement, by way of excuse to his neighbours; or, that the persons who carried off the child took this method of getting quit of him.

Def. pr. 309,
A.

The description of persons and supposed concurrence of circumstances have already been accounted for. These cannot avail the pursuers, for the reasons above given: and the memorialist begs leave to add another, which he apprehends, in point of law, to be conclusive on this head of the proof, viz. that descriptions of persons, and a correspondence in collateral circumstances, supposing them to be proved, cannot be admitted as legal evidence of the fact, where, from the nature of the thing, a better and more complete proof could have been obtained. Sir John Stewart was alive long after the discovery made of these witnesses; and Mrs. Hewit was in life till within these few months. It will not be said that Sir John and Mrs. Hewit have been confronted with the family of Mignon, and pointed out by them as the identical persons who carried off the child.—The defender does not admit that even this would have been a conclusive proof; but it would at least have been stronger than the evidence as it stands.—The case of the Falkirk merchant will be remembered.—He was not only *described* in an accurate manner by five or six witnesses, but *pointed out* by them in the midst of a number of others, as the person guilty of a very singular fraud laid to his charge; and your Lordships were once so much convinced of his guilt, that you pronounced two consecutive judgments against him; yet so unwilling were you to convict a person of good character and reputable station, upon evidence not entirely

ly conclusive, that, upon a third reclaiming petition, and a very narrow proof of *alibi*, he was unanimously acquitted.

Madame Flon depones, "That the father and mother of the child Purf. pr. 715,
 " told the deponent, that they were strangers that carried away their ^{C.}
 " child; *that they would know the gentleman very well if they saw him a-*
 " *gain.*" Madame Kamper depones, "That these gentlemen, (*i. e.* Mr.
 " Andrew Stuart, &c.) did afterwards ask Mr. Mignon if he would know — 724, C.
 " the gentleman again to whom he had given his child; to which
 " Mignon answered, *that if he saw him he would know him extremely*
 " *well.*" It is to be observed, that this conversation between Mr. Stu-
 art and Mignon happened in August 1763, and Sir John Stewart lived Jour. purf. p.
 till June 1764.—Mignon himself depones, "That, since the *Monitoire*, ^{1097, I.}
 " there have come to the deponent's house several persons on the sub- Purf. pr. 755,
 " ject of this affair; and, one time amongst others, there came three
 " persons together, to whom the deponent said, that he wished they
 " would let him see the gentleman who had taken away his child, *for*
 " *he was sure he would know him again;* and that the deponent's son,
 " who was at that time aged only six years and a half, boasted that he
 " would also know him again."

The pursuers never signified the least desire, either by application to your Lordships or otherways, that the Mignon witnesses should be confronted with Sir John Stewart and Mrs. Hewit. Sir John was prevented from going to France by the illegal proceedings in that country against him. But expedients might have been fallen on of obtaining a confrontation; and your Lordships would have approved of any rational scheme, by which the evidence could have been rendered more compleat. Mr. Stuart was expressly informed by these people, that they would know the gentleman again if they saw him. Why therefore were they not brought into the presence of Sir John Stewart, that they might point him out if he was the gentleman. The memorialist is intitled to say, and does firmly believe, that the pursuers declined any such experiment, because they were conscious that the trial must have turned out against them. But, at any rate, it is enough to say, that the trial was not *in fact* made, or so much as proposed by the pursuers: and therefore, supposing every other circumstance of this enlevement had answered to Sir John Stewart and to the defender, your Lordships could not have admitted the proof on this head as legal or satisfying, because it is not the best proof which the nature of the case did admit of.

The council for the pursuers were so sensible of the defects under which this great branch of their evidence laboured, that in the pleading they fairly gave it up, and admitted that there was no *direct*
 6 B proof

proof of the enlevement in so far as applicable to the defender; but they still insisted that they might found upon it as an *indirect circumstance*, tending to throw suspicion on the evidence of his birth.

The memorialist does, with submission, say, that this is as extraordinary an argument as in any case has been maintained. If there be no proof that Sir John Stewart and Lady Jane Douglas took away the child of Mignon while at Paris, or that the defender is that child, how should it affect the evidence of his birth, supposing not only Mignon, but a hundred other inhabitants of Paris, had lost children in the year 1748? If indeed the evidence of the defender's birth were *alibunde* disproved, your Lordships might from circumstances suspect that he was the son of Mignon, or of some other person who had lost a child about that time: but in no other respect can the loss of Mignon's child be introduced as a circumstance of evidence.—Unless the pursuers can show by clear evidence that the defender is not the son of Lady Jane Douglas, it neither can avail them, nor hurt him, to prove that Mignon had a child taken away from him in the year 1748. If indeed they could establish, by direct and incontrovertible evidence, that he is the son of Mignon, this would necessarily infer that he was *not the son of Lady Jane Douglas*: but one or other of these things is certainly incumbent on them, either, *1mo*, To prove *negatively*, that he is not the son of Lady Jane Douglas; or, *2do*, To instruct *positively*, that he is the son of Mignon. And indeed they expressly undertook the proof of both and each of these points. It is by no means sufficient for them to say, that there are circumstances which lead to suspect that he *may not* be the son of Lady Jane Douglas, and other circumstances which tend to show that he *may* be the son of Mignon. This is no more than bringing one *conjecture* in aid of another. And in answer to both of them, it would be sufficient for the memorialist to *conjecture*, that he *may* be the son of Lady Jane Douglas, and *may not* be the son of Mignon; even if he had not one single circumstance of actual proof in his favour.

The pursuers are not to be indulged in raising up conjectures in place of evidence. They undertook to prove, that the defender was not born of the body of Lady Jane Douglas, but was the identical son of Mignon; so that they seem to have put the cause on this footing, that he must either be held to be the son of Lady Jane Douglas, or the son of Mignon. The defender has no occasion to dispute whether a clear and satisfying proof of the first proposition might not have been sufficient for reducing the service. In fact, the pursuers, though they undertook both, have proved neither.—That they have not proven him to be the son of Mignon, they themselves admit; and indeed, if your Lordships were to consider him as now engaged in

an action of declarator, for being found and declared the son of Mignon, you certainly could not have a doubt of giving the decision against him. In France, such an attempt upon his part would be held in derision, and the proofs which have been brought would not be so much as listened to, or read by the judges, because no person in such circumstances can be admitted to a new state, even upon the clearest evidence, far less upon proof so weak and inconclusive. In this country the proof would not perhaps be rejected as incompetent; but as it is admitted to be unsatisfying, the judgment would in effect be the same.

The memorialist comes now to the other supposed transaction, concerning the child of Sanry in 1749, which, though posterior in time, ought perhaps to have been first treated of, as it was *first* discovered, and appears to have laid the foundation of that fabrick, on which this whole branch of the proof, concerning the enlevement of children, is endeavoured to be reared. The pursuers talk much of the accidental manner in which this discovery was made, and of the candour of their agents in tracing it; for proof of which they appeal to one of their own private journals, which they have lately taken the trouble to print and disperse through the kingdom, with a view, as it would seem, of passing it on ignorant people, as evidence of the facts therein contained.

ENLEVEMENT OF
SANRY.

The memorialist has already had occasion to animadvert on some of these private productions, and to show what an erroneus and partial state of facts they exhibit. It is unnecessary to enquire with what view they were originally composed, whether to give a favourable impression of the cause to the friends and tutors in this country, to whom they were to be shown, or to serve as a manifesto to the publick, in case of after enquiries into conduct. Certain it is, that they are full of the greatest mistakes, and it is unfair in the pursuers to publish and found on them as evidence. They were ordered by the House of Lords to be produced, that the defender might have all possible light into those secret proceedings, which were carrying on against him in France, and to put him in some degree on an equal footing with his opponents. He is intitled therefore to avail himself, as far as he can, of every thing contained in these productions, which can be of any service to him; but to suppose, that the pursuers are also intitled to found on their own assertions, as probative in their favour, would be an absurdity which your Lordships will not presume the supreme court of this nation could be guilty of.

Nothing can more illustrate the impropriety of their founding on their own memorials, and dispersing them as a manifesto to the world, than a circumstance which occurs in this very journal, appeal-

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Purf. pr.
1074, H.

ed to in the affair of Sanry. An article of date, May 20th, 1763, is in these words: " Monsieur d'Anjou came to me between ten and eleven, and related to me what had passed at his visit to the cure de St. Laurent this evening; that the cure told him, he had seen the aubergiste, who recollects perfectly the strangers who lived in her house; that they consisted of a gentleman and two ladies, whom she took to be English or Irish, and that she recollected a circumstance, that her servant, the servant of the auberge at that time, *had remarked the route* which these strangers took in quitting Paris, and had said, *comment est ce que ces personnes disent qu'ils devoient aller à St. Germain? ils ont pris une route contraire, la route de Champagne.*"

—1076, D.

In an after passage, dated May 21st, he also relates, upon the authority of the curé, " That the garçon of the auberge had either followed or met them somewhere after their leaving the house, and observed that they did not take the route of St. Germain, upon which, on his return to the auberge, he said to the aubergiste, *ces personnes ont dites, qu'ils allèrent à St. Germain, mais point du tout ils ont pris la route de Champagne.*"

This is one of the most striking circumstances in the whole journal, and had it come out in proof, the argument, which would have been founded on it, is obvious. It amounts to this, that the persons who took away the child in 1749, when they left the inn where they had lodged, in place of going towards St. Germain, which was their pretended destination, *took the route of Champagne, i. e.* the very route which fell necessarily to be taken by Sir John Stewart, Lady Jane, and Mrs. Hewit, upon returning from Paris with Sholto. In two different places of the journal is this repeated upon the authority of the curé, who is said to have taken it from the people of the inn. The memorialist shall admit it to be probable, that Mr. Stuart was really informed of this circumstance by the curé, and consequently had reason to put it into his journal at the time, but that the curé must have taken it from his own imagination, and not from the people of the inn, is extremely certain. In the first place, had Mr. Stuart in the least reflected on the nature of the fact itself, he must have been satisfied that it was absurd, and that the allegation could not be true. In setting out from Paris, and for above ten miles from that city, the route to Champagne is the same with the route to Peronne, Bruffells, French Flanders, Calais, and a hundred other places upon that quarter of France; and no person, without the gift of prophecy, or without following the carriage for ten miles out of Paris, could possibly have divined, that Champagne was the place of destination. 2dly, The people of the inn themselves, examined upon this circumstance, have expressly denied that they ever said any such thing, and, on the contrary, have affirmed, that, upon driving

driving from the inn, the coach took a route precisely the reverse, viz. to the *apport* or market-place of Paris. Madame Dumenil, who was one of the servants of the inn, says, "She remembers that the hackney-coach, into which they went, was turned towards *l'apport de* Paris, *opposite* to the Port St. Dennis." It will be observed, that St. Dennis is the port out of which they would have gone, if they had been destined for Reims, and possibly the curé, in talking with these people, has imagined they said the coach was turned *towards* the Port St. Dennis, in place of *opposite* to it. Dumenil, another of the servants, depones, "That the gentleman and the two ladies with the child went into the hackney-coach, and turned *towards l'apport de Paris*, that is to say, the square near to the grand cha-telet." Madame Selle depones, "That she *did not say* to the curate, that her servant had told her what road these strangers took at leaving her house."

Purf. pr. 788,

A.

—790, C.

—793, G.

But this is not all; for, it appears from a letter in process, under the hand of Mr. Stuart, to his friend Mr. Johnston, dated Paris 13th June, and which was probably wrote soon after these conversations with the curé, that Mr. Stuart himself was by that time sensible he had gone rather too far in this capital article; he says, "The garçon of the auberge, who has been found since that time, recollects perfectly these strangers, and their carrying off the child, their abrupt departure, giving a false route, &c. but does not remember his having observed, or said, that they had taken the *route de Champagne*; his wife, who served in the same house, remembers, that the *fiacre* in which they set out, drove towards the Port St. Dennis, which is the port towards Champagne; but this does not amount to what is said in the Memoire, which took rise from what the curé had been informed of, and what we had learnt from him. Since the garçon de l'auberge does not remember that circumstance, that paragraph should be left out of the Memoire." How then comes this mistake not to be explained in the journal? and why is that work published and handed about in publick, containing, as it is said, a fair and just recital of Mr. Stuart's discoveries, but of which one of the capital circumstances was known by the pursuers themselves not to be true? The memorialist could point out some other instances of the same kind in the journal, but the above will serve as a specimen of the authenticity of that performance, and of the credit which is due to it, as evidence for the pursuers.

The first hint of this enlevement is said to have come from Reims, in a letter to Mr. Stuart, from one Mr. Recicourt, of date 17th April 1763, in which he writes: "Monsieur and Madame Aubigne, whom you have seen at my house, saw, some days ago, Monsieur Poule,

—1043, E.

“ Abbé de Nogent sous Concy, who told them, when on the subject
 “ of your affair, that some time ago the curé of St. Laurent, or of
 “ the Fauxbourg St. Laurent of Paris, had related to him an adven-
 “ ture, of which he had been witness about thirteen or fourteen years
 “ ago. An English seigneur and his wife came to settle in his Faux-
 “ bourg, and after having gained the good-will of the curé, by some
 “ alms given to the poor, they told him the intention that they had
 “ to take the charge of the education of the son of some poor person
 “ of his parish, and even to take such child with them. *The curé*
 “ *pointed out to them* a poor shoemaker, who had six children, amongst
 “ whom they made choice of one, whom they took, and disappeared
 “ immediately.”

Purf. pr.
1071, H.

Upon receiving this intelligence, Mr. Stuart, it would seem, applied to the curé de St. Laurent, who, at first seems to have remembered little of the matter, but, at the desire of the pursuers, took upon him the office of an agent for them, which he executed with a good deal of keenness, and possibly he thought himself interested in the matter, as Mr. Recicourt's letter points at him in a way, which might make him desirous to have the affair somewhat explained. Mr. Stuart's journal begins in this manner: “ Went to Mr. d'Anjou's, communi-
 “ cated to him the hint given by Abbé Poule, about two foreigners
 “ having carried off a child from the Fauxbourg St. Laurent, about
 “ thirteen or fourteen years ago; Monsieur d'Anjou's son and I went
 “ immediately to the curé of the Fauxbourg St. Laurent, had a con-
 “ versation with him of about ten minutes, the substance of which is
 “ taken down in writing by Mr. d'Anjou's son; from this conversa-
 “ tion we are of opinion, that the adventure described by him, and
 “ which he thinks happened *in the year 1748 or 1749*, applies to Sir
 “ John Stewart; and that there is great reason to believe, that it was
 “ in this manner he got the second son in November 1749. The curé
 “ has promised to make enquiries for the father and mother of the
 “ child, that was taken away, and for the precise time, &c. but re-
 “ quires five or six days at least to do this, and desires we may write
 “ him a note some days hence, in answer to which, he will appoint
 “ a time for seeing him.”

The first thing done by the curé, was to send for Sanry and his wife, and likewise for a woman called le Gris, who had accompanied the gentleman to the house of Sanry, when the child was taken away. These people he examined in presence of each other, and took down
 773, G. what they said in writing. The curé depones, “ That it was *in order*
 “ *to recollect the circumstances, the period, and the year* of the carrying
 “ away that child; that the deponent sent for the wife of Sanry,
 “ who told him, that the child was twenty months old, or there-
 “ abouts,

“abouts, when he was carried away, and that it happened one
 “month or two after the fair of St. Laurent, which, by her account,
 “ended that year, the day before Michaelmas; that she added to the
 “deponent, that it was Madame le Gris, who had brought to her
 “house the stranger who carried away the child; that it was upon
 “that intelligence, that the deponent sent for Madame le Gris, who
 “was in his house at the same time with the wife of Sanry, whom he
 “did likewise interrogate, in regard to that event.” And in his
 after examination, as a witness for the defender, he depones, “That Def. pr. 689,
 “after seeing for the first time, Mr. Stuart, here present, as he has F.
 “said in his former deposition, he sent *sundry times* for Madame San-
 “ry, her husband, Mr. Sanry, and Madame le Gris. Depones, that
 “it was upon Madame Sanry’s having mentioned Madame le Gris,
 “that he sent for her; that Madame le Gris did not at first know Ma-
 “dame Sanry, but that thereafter, *Madame Sanry made Madame le*
 “*Gris recollect her*, by speaking of the enlevement of her child; and
 “in the end, *they helped one another*, to the remembrance of some cir-
 “cumstances thereof. Depones, that being desirous to inform him-
 “self of the particulars of that affair, *he caused write down* in his pre-
 “sence, what all of them related of this affair; the deponent does
 “not believe, that these three persons were all in company when this
 “was wrote; but believes, that the husband and wife were once pre-
 “sent together, when this was taken down in writing.”

Madame Sanry, after mentioning, that, in the month of May, be-
 fore her examination, she had been sent for by the curé, who asked
 her if she remembered that a child had been taken away from her,
 says, “That the deponent returned the next day to the curate with her Purf. pr. 797,
 “husband, and both the one and the other told him all the circum- H.
 “stances which they remembered, which are the same as she has now
 “deponed to: that the curate sent for Madame le Gris, who at first did
 “not know the deponent, but recollected her immediately after: that
 “the curate, after enquiring into the situation of the deponent and
 “her husband, *gave the deponent six livres of charity*, to enable her to
 “pass the Whitsunday holidays.”—Her husband depones much to —801, F
 the same purpose.

It will be observed that the Sanry family, as well as le Gris and the
 other principal witnesses in this enlevement, are the lowest wretches that
 can exist. Sanry, the husband, was formerly a rope-dancer or tum-
 bler by profession, and is at present a beggar going from door to door
 for charity.—The curé depones, “That two of Sanry’s children are —773, F.
 “tumblers, for which reason the deponent has declared to the mother,
 “that he will withdraw the charities of the parish unless they quit
 “their profession.” The woman le Gris is not in much better circum-
 stances,

stances, and was, at the time of her examination, 72 years of age, and remarkably deaf. The curé perhaps did not mean any thing improper; but, by his unguarded manner of examination, and from the notions which he himself appears at that time to have imbibed from his frequent conversations with those acting for the pursuers, it is easy to see that these poor people might be led to connect circumstances, and make up a story which would otherways have hung very ill together. Madame Selle, a woman somewhat above the rank of the other witnesses, deposes, "That the curate of St. Laurent told the deponent *several particular circumstances with regard to the affair* in question; but that the deponent has put in her present deposition all that consists with her own personal knowledge."

Parf. pr. 793,
G.

To this improper training and preparation of the witnesses, before any person on the part of the defender had an opportunity of seeing them, may be added the unfair influence which they were put under by the *Monitoire* published as early as July 1763, which contains a very minute detail of the several facts and circumstances to which it was expected they were to swear, and lays down the imposture as established beyond any possibility of dispute. In consequence of this *Monitoire*, the witnesses did most of them enter into revelation before this very curate of St. Laurent, who had already been at so much pains to prepare and unite their testimonies.

In these circumstances, it will not be surprising that the defender's agents thought it their duty to object against such witnesses as Sanry and his wife, determined and instructed as they were to give evidence against him. They seem all of them to have considered it as a fact of which there was no doubt, that the persons spoke of in the *Monitoire* were the thieves of Sanry's child, and that the only question was, how to make circumstances and facts tally so as to convict them. Madame Dumenil, after relating some particulars concerning Duvigné and the child taken away by him, adds, "That the deponent learned by the *Monitoire*, that the child of whom she had been speaking is dead, and that she did not know it before."—The *Monitoire* had informed her that such was the fact, and the witness implicitly believed it. The same was the case of the other witnesses; and they thought it a duty they owed to their religion, to strain every circumstance, in order to give their aid in supporting the *Monitoire*.—After such preparation and most illegal influence, nothing less than the force of truth can account for their having failed in the intended application to Sir John Stewart and Lady Jane Douglas.

Parf. pr. 788,
I.

The facts condescended on with regard to this enlevement, were in substance, That Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, having gone from Reims to Paris, on pretence of bringing a-
way

way the youngest twin, did in the first place put up at Renaud's auberg, in the rue Franc Burgeois, under the designation of *Colonel Stewart, a Scotsman, and his wife*, and were in that house on the 19th November 1749; that they afterwards took another lodging in the house of the widow Selle, at the *Croix de Fer*, rue St. Dennis; that Sir John past there by the name of *Duverné*, an Irish gentleman, *Lady Jane as his wife*, and *Mrs. Hewit as his sister*; and that they were entered under those designations, as lodged at the widow Selle's on the 2nd November, as appeared from the registers of police, that *after having come to this house*, Duverné applied to the *curé of St. Laurent*, for a list of poor people, who had numerous families, which the *curé* refused; that, *next day, or soon after*, he applied to the *sisters of charity*, and obtained a list of poor families, and he went to sundry houses, accompanied by a woman, called *Le Gris*, enquiring for children; that he came at last to the house of *Sanry*, a poor man, who had eight or nine children, where he fixed his eyes on one of the youngest, and upon being informed, that he was born in 1748, requested the parents to give him to a lady, who was very charitable; that, *next day*, he returned to the same house, when the parents having complied with his request, he gave them some money, to purchase necessaries for the boy, who was the *day after* carried home to the house where Sir John lodged, accompanied by the father and mother, who were prevailed on to leave him in the hands of *two ladies*, whom they found with Sir John; that the father and mother returned *next day*, with a view of taking back their child, but found him in good health, and well taken care of, and Sir John told them his name was Duverné, a gentleman of Ireland; that he generally resided at St. Germain en Laye, and that they might see their child as frequently as they pleased; whereupon they rested satisfied; that they returned, however, the *following day*, being still uneasy about their child, but were told, that the strangers had set out that morning with the child for St. Germain en Laye; that the father made enquiries, but to no purpose, at St. Germain en Laye, and afterwards at Rouen, Havre, Dieppe, and other places; that *soon after this event*, the father applied to the *curé de St. Laurent*, who made application to Mr. Berrier, *lieutenant de police*, requesting his assistance, to discover these strangers, and that Mr. Berrier ordered enquiry to be made, but without success; And, lastly, That Sir John, Lady Jane, and Mrs. Hewit, having returned to Reims with this child, who had a different appearance from the other child, they, in a very few days after their return, set out with their whole family for England.

The pursuers in this tale, as well as in the former one concerning Mignon's child, did expressly undertake to bring it home to Sir John Stewart, Lady Jane Douglas, and their youngest child, Sholto; and

one of the circumstances which they were particularly fond of, because, in their apprehension, it had the most convincing appearance, as well as the most undoubted foundation in truth, was a supposed similarity between the two journies in 1748 and 1749, in the article of a *double residence*; in one house under a *fictitious* name, in another under their own appellations. In the *Monitoire*, which was published about the same time with the *condescendance*, this circumstance is remarked with great triumph, in the following words: " That they arrived in Paris in the foresaid month of November 1749, and alighted at the auberge, rue des Francis Bourgeois, near the port St. Michel, kept by one Renaud, where they were on the 19th of the said month of November, as appears by publick and authentick records; but, by a most remarkable repetition of the circumstances of their first journey, they took, almost immediately, a double lodging, under a feigned name, and accordingly went to lodge all three under this fictitious name, on the 21st of the same month, at the Croix de Fer, rue St. Dennis, where they lived five or six days; during which period they carried off a child, whom they took with them to Reims and to England, as the pretended twin-brother of their eldest child."

Def. pr. 275, F. After a good deal of enquiry, however, and much trouble, it was ascertained, that the persons who were at Renaud's hotel, on the 19th November 1749, were *Colonel Stewart of Ardsbiel and his lady*. This is a fact now admitted on all hands, so that the argument of the *double demeure* has once more failed the pursuers; and the next question is, What proof have they brought of the other facts condescended on with regard to this enlevement?

In this story, as well as in the former, a distinction is to be made between the enlevement itself, and the circumstances attending it. The pursuers do not now pretend, that they have brought it home to Sir John Stewart, by positive evidence, more than the alledged abstraction of Mignon's child in the year 1748; but they endeavour, from *circumstances*, to point out a resemblance between the enlevement of Sanry's child, and the history of Sholto. The memorialist does, with submission, say, that if these circumstances had been as connected, and as strong as witnesses could make them, they would have been of no avail, after the clear proofs which have been stated of Lady Jane's pregnancy, her delivery, her connection with a La Marre, the existence of her second son Sholto, and the various other particulars above noticed, all of which stand upon much more unsuspicious and credible testimony, than that of the beggars who have been adduced in the Sanry and Mignon transactions. It is indeed a most chimerical supposition, that, after having secured one child, which was

all

all that could be necessary for them, they should have risked another attempt of the same kind, and gone about it in the daring and publick manner which Duvern  seems to have followed, at a time too when the Duke had stopped their pension, and when it is in proof, ^{Def. pr. 519;} that, before Lord Morton's supply came to them, they had been reduced to the necessity, at Reims, of burning and selling the lace off their cloaths, to purchase bread for themselves and their family.—The 350*l.* lent them by Lord Morton, did no more than pay their debts at Reims, and carried them to Dunkirk, where they were obliged to borrow money from Sir Walter Rutledge and the Chevalier Douglas, before they could prosecute their journey to London; so that, in these circumstances, to assume another addition to their family, would have been a most extraordinary imagination.

The memorialist might add too, that, in this enlevement, as well as in the former, the proof attempted by the pursuers labours under a clear legal defect, in so far as a confrontation of parties never was so much as desired by the pursuers, though the people of the Croix de Fer, as well as the Sanry witnesses, ought to have had some idea of the faces and figures of those whom they have pretended to describe. But the matter does not rest on these general observations. The circumstances which they have endeavoured to bring in evidence may be classed under three heads: 1*mo*, The description of persons. 2. The description of the child. 3. The correspondence in time. And, in all of these, when examined with attention, it will be found, that the pursuers, notwithstanding the advantages with which they went to proof, have entirely failed; and, consequently, that the application of this enlevement to the parents and twin-brother of the defender, is highly injurious.

The description of persons, though it was the circumstance in which ^{Description:} witnesses could be easiest informed, has fallen greatly short of what ^{of persons.} seems to have been intended. It would have been singular, indeed, if, after the opportunities which all and each of those low witnesses had of learning the history, ages, quality, nation, &c. of Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, they had not picked up some few of the outlines of their descriptions, and particularly of Sir John Stewart, whose figure, and every circumstance relating to him, had so long been the subject of universal conversation in Paris. At the same time, though some of the witnesses, after having been assured by the Monitoire, that Duvern  and Sir John Stewart were one and the same person, have strained hard to make their figures correspond, yet all of them have come greatly short of Sir John's real description. It is well known, that Sir John Stewart was a very stout man, near six feet high, and at that time about sixty years of age. The servants of the
Croix

Croix de Fer, who had best access to observe Duverné, make him to have been a man of a middle stature, and about fifty years of age. Dumenil says, "That the gentleman appeared to him to be full fifty years of age; that he was still very alert; that he was much about the height of the deponent, but was much thinner, his skin white, and his face ruddy and high coloured, wearing a white wig in the English fashion, and his coat bordering on a cinamon colour; and at going away he wore a great coat, the deponent does not positively remember of what colour, but believes it was grey."—Dumenil's height is certified by the commissioners to be five feet two inches and a quarter French, which is about five feet, and from seven to eight inches, English measure. With regard to the circumstance of an English wig, sworn to by this witness, it is to be observed, that the common appellation of a round wig in France is an *English wig*, or *wig in the English fashion*, and such wigs are wore by four-fifths of the inhabitants of France.

—786, G. Madame Dumenil depones, "That he was about the bigness of Mr. Burnet, and about the height of Mr. Mackonochie, both present; that his face was tawn'd*, and he appeared aged, from forty-

—792, C, D. "six to forty-seven years at least." Mr. Mackonochie's height is certified to be five feet two and a half inches, French measure. Your Lordships, who had occasion more than once to see Sir John, will be satisfied, that he was much taller than Mr. Mackonochie, and of a much larger make than Mr. Burnet.

—802, C. The description given by Sanry is a bundle of negatives; he makes him neither too ruddy nor too pale, of a middle size, neither too full nor too thin. Mr. Vielle, who pretends to have seen him through the glass of his window, says, he appeared to be in stature five feet six or seven inches, from fifty-five to fifty-eight years of age, his complexion a little tawn'd; and depones, "That he was dressed in a coat of white cloath, like a French officer, and wore a knotted wig, and appeared to the deponent to have the air of a military man."

Amidst these contradictory accounts, all that can be gathered is, that the witnesses suppose him to have been a gentleman, and some of them also make him a foreigner; at the same time the curé de St. Laurent says, "he does not recollect if, by his language, he appeared to be a foreigner." How far this comes home to Sir John Stewart, or affords the least presumption against him, your Lordships will judge.

—773, D. But the description given of the two ladies, renders it certain, that they were not Lady Jane Douglas and Mrs. Hewit. From the *Monitoire*,

* The French word is *basané*, which signifies *sun-burnt* or *weather-beaten*. Sir John Stewart, when at Michelle's in the midst of summer, does not appear to have had this sun-burnt or weather-beaten complexion. Breval, the person who shaved him, says he had a fresh air, his skin was white, and of a fine colour, and his cheeks of a vermilion colour.

toire, and other accounts which the witnesses had heard concerning this affair, they were naturally led to mention a lady of *high quality*, as one of the persons concerned in it; but whilst they were chiefly taken up with this idea, it appears that they have either mistaken or been left in the dark with regard to the other woman; and as they were obliged to supply that description, from their imaginations, or from their memories, in the best way they could; so they have also made her a lady of quality, and given her a figure and dress entirely similar to that of the lady first described, which in no shape corresponds with Mrs. Hewit.

The masculine appearance, the age and strong features of Mrs. Hewit, as described by the Michelle people and others, have already been pointed out. No such woman is to be found among those mentioned by the Sanry witnesses; on the contrary, the person who seems to have been intended for her must have been the reverse of Mrs. Hewit, in age, looks, figure, and every other circumstance, and even the woman, intended to pass for Lady Jane, is different in age and in stature. It appears from the story, as told both by the Sanry family and Le Gris, that a lady came with the gentleman in the coach to Sanry's house once or twice, Le Gris says, *three different times*, to make the transaction for the child. This lady is very particularly described by Le Gris, as a very tall, thin well-proportioned lady, with an air of quality, a pale delicate face, aged from thirty-five to thirty-six, and well dressed, and she appears also to have spoke in French to the child's mother. Le Gris's deposition is in these words: "That, at the Purf. pr. 778, 1.
 " same time, the gentleman gave eighteen livres to Sanry's wife to
 " cause dress the child, and said that he would come back in the af-
 " ternoon with *the lady of condition*, and he came back accordingly,
 " with the said lady in the afternoon, and the deponent was likewise
 " there present; that the lady *asked the mother*, if she would intrust
 " her child to her, that he would be very rich, and might one day do
 " them good, and that he always would acknowledge them for his fa-
 " ther and mother? that afterwards, the gentleman and lady went a-
 " way, and the deponent staid with Sanry's wife, to whom the depo-
 " nent said, that the lady *appeared to be rich and of quality*, and that
 " she would do good to them, of which they had need, considering
 " their great poverty. To which Sanry's wife replied, That her hus-
 " band had had great difficulty to bring himself to resolve upon it;
 " but that at length, upon account of their poverty, he had consented
 " to intrust the child to the persons who had asked him; that next
 " morning the gentleman and lady came back to Sanry's house; that
 " the deponent, who saw them pass, followed them thither; that the
 " same day, in the afternoon, the gentleman and lady came to seek the
 " child;

Pur. pr. 750,
G.

“ child ; that the deponent, who was in her ware-house, opposite to
 “ Sanry’s house, saw the child put into the coach, carried by Sanry’s
 “ wife, his mother, who went into the coach with them ; that next
 “ day, the deponent, accompanied by Sanry’s wife, went to the inn at
 “ the sign of the Croix de Fer, in the street St. Dennis, where the
 “ gentleman and lady lodged, where she saw no body in the room
 “ where the child was, except a girl, who appeared to her to be the
 “ maid of the inn.” In an after part of her deposition, she says,
 “ That she saw *the lady three times*, the first time, the day before the
 “ carrying away of the child, and twice the day it was carried away,
 “ to wit, once in the morning in Sanry’s house, and afterwards, when
 “ she went into the coach in the afternoon, carrying with her the
 “ child ; that the lady had a sort of veil or hood which fell down up-
 “ on her eyes ; yet the deponent observed *that she had a white and*
 “ *pale face, and the air of a lady of very great quality, her face neither fat*
 “ *nor thin ; that she was very tall, slender, and well proportioned, and ap-*
 “ *peared to the deponent thirty-five or thirty-six years of age ;* that she
 “ does not recollect the fashion of her cloaths, but that she was well
 “ dressed ; that the lady came each time in a hackney-coach, and the
 “ deponent does not remember to have seen any servant ; that the la-
 “ dy appeared to her a stranger, *and spoke French less than the gentleman.*
 “ Interrogated for the defender, depones, that she was only once at the
 “ Croix de Fer, and *saw no woman there*, except the girl of the inn a-
 “ bove mentioned ; that she saw in Sanry’s house only *the one lady*,
 “ whom she has already spoke of.”

Here your Lordships see that this woman Le Gris, a favourite wit-
 ness of the pursuers, and whose deposition they will not chuse to con-
 trovert, gives a pointed description of the lady who came to Sanry’s
 house, and whom she saw no less than three times. Mr. Stuart in his
 letter to Mr. Baron Mure, 12th June, 1763, in talking of this woman,
 says, “ She is a person of exceeding good character, and blessed with
 “ *a happy memory ;*” and indeed she is supported in this description by
 the only other witnesses except Sanry and his wife, who had occasion
 to remark the lady who came to their house for the child. Madame

— 784, Grevaine depones, “ That he returned the next day or day after with
 “ *a lady*, who appeared to be at least *thirty-five years of age ;* that she
 “ did not come out of the coach ; that the deponent saw her, *that*
 “ *her face was pale and wan ;* that the gentleman took the child into
 — 785 D. “ his coach, and they put him upon the lady’s knee.” — Madame Lou-
 pin depones, “ That he came back the next day in a coach with *the*
 “ *lady* who did not come out of the coach, and who appeared to be
 “ *35 years of age or thereabout, her face was pale and white,* having
 “ on

"on her head a hood, let down, and on her shoulders a red mantle."

Sanry and his wife have, as it would seem, entirely forgot the figure and description of the lady who came to their house, but the other lady who remained in the inn, they had occasion to see two different times, and they describe her very accurately, as follows: Madame Sanry depones, "That the day following, the same gentleman Purf. pr. 796,

"came back with a lady about eleven o'clock before noon, and that C.

"immediately they carried away the deponent and her child in a

"hackney coach, without any servant, and went to the inn at the

"Croix de Fer, in the street St. Dennis, whither the husband of the

"deponent and one of their children followed them behind the coach;

"that the deponent and her husband went up with the said gentle-

"man and lady into a room in the inn, where they found *another la-*

"*dy*, who made much of the child, and thought him pretty." She

afterwards proceeds to tell that her husband and she returned the next

day to enquire about the child. Depones, "That they went into a — G.

"room where they found the child, whom they were dressing before

"the fire; that the deponent saw there two ladies, and particularly,

"*that one to whom the child had been given the day before by the gentle-*

"*man at the inn.* The deponent does not know if the other, who held

"the child, was the lady that had been at the deponent's house the

"day before." And in an after part she depones, "That the lady — 798 D.

"who came to the deponent's house with the gentleman, had a sort

"of hood upon her head, *but so as she had no part of her face concealed.*

"That the deponent *does not remember neither her face nor her size, and*

"*cannot therefore judge of her age.* That the lady, whom, as the de-

"ponent remembers, *she found at the inn, when she came there with*

"*her child, was en negligée; that her face was pale and very white;*

"*that she was very tall, very thin, and well made, and appeared to the*

"*deponent from 30 to 35 years of age, having a noble and foreign air.*"

Further depones, "That the lady who came to the door of the room, — 799 B.

"when the deponent went to the inn, the day after the carrying away

"of the child, *is the white lady, above designed, and that she spoke to*

"*the deponent some words in French, which the deponent understood.*"

Sanry, the husband, depones, "That he has no idea of the counte- — 802, F

"*nance nor of the size of the lady who was at his house; that the la-*

"*dy who was at the inn, to whom the child was delivered, had a ve-*

"*ry white face, thin, and a little long, was of a fine figure and distin-*

"*guished air; that she was then in dishabille; that she appeared to*

"*the deponent a stranger; that she had a foreign accent, although the*

"*deponent heard her speak little; that she was tall for a woman,*

"*which the deponent reckons five feet one or two inches, (i. e. five feet,*

"fix

" six or seven inches English) or thereabouts ; *her waist small at the lower part, and well made* ; that she appeared to the deponent to be " aged about thirty-four or thirty-five years."—Interrogated for the pursuers, depones, "*That the figure of the lady whom he saw at the inn is more present to him than that of the gentleman.*"

These descriptions given by the pursuers own witnesses are entirely exclusive of Mrs. Hewit. The woman Le Gris, Grevaine and Loupin, had no opportunity of seeing the lady in the inn ; and it is clear from their depositions, that the lady who came to Sanry's house was a person very different from Mrs. Hewit, who neither was thin, pale, genteel, nor spoke French. On the other hand, both Sanry and his wife talk with very great certainty of the appearance and figure of the lady in the inn, whom they make *very tall*, very thin, well made, of a pale complexion, a noble air, and near thirty years younger than Mrs. Hewit.

Neither will any of these descriptions answer to Lady Jane in the article of stature, as it is in proof that she was rather a little woman than tall. Def. pr. 385, E. Doctor Eccles depones, " That Lady Jane was a middle-sized woman, rather *upon the short as tall*, and as graceful a lady-like —408, E. " woman as he ever saw."—Mrs. Skene depones, " That Lady Jane was " slender, and *rather a little woman than tall.*"—Mrs. Glas depones, —370, C. " That Lady Jane *was not a tall woman*, scarce so tall as the deponent, " but looked to be as tall, having been thin and genteel, and a graceful noble look."—Mrs. Maclean depones, " That Lady Jane was a —404, E. " middle-sized woman, *but rather little than tall.*"

It will be said, that Madame Dumenil gives a description of the two ladies, which seems to answer better to the figures of Lady Jane and Mrs. Hewit. Depones, " That the youngest of these two ladies appeared to be from thirty-four to thirty-five years of age: that she " was of a good height, and slender make ; and that the other lady " was more * corpulent and taller, and appeared to be from forty-five " to forty-eight years of age." Purf. pr. 786, G.

But it is answered, in the first place, that even these descriptions, supposing them to be genuine, do by no means correspond, either with the real descriptions of Lady Jane and Mrs. Hewit, or with their ages and figures, as deposed to by the Michelle family and others. Secondly, This woman, Dumenil, was only the kitchen-maid of —787, H. the inn, and she herself depones, that it was another maid, called La Rose, who attended more particularly on these strangers, and which maid is now dead. Thirdly, Her deposition is very inaccurate in

* So the pursuers have translated it, but the French expression is *plus corpore*, which means only, that she was thicker, or not so lean, and does not convey the idea of fatness or corpulency.

n other respects: For example, she says the enlevement happened five or six months after her marriage, which she dates on the 10th June; whereas, in fact, it happened on the 10th July; and she not only stands single in the above description given by her, but she is flatly contradicted by the whole of the other witnesses, and even by her own husband, who was also a servant in the inn at the time. Monsieur Dumenil depones, "That the eldest of the ladies was forty-five Purs. pr. 790, years of age at least, and *that he acknowledged that lady for his wife*, G. "that is to say, that that eldest lady appeared to the deponent to be "the mistress; adds, that the youngest might be *thirty years of age*, "and, by the care which she took of the other lady, she appeared to "be her attendant." And a little below, he says, "That the two — 790, I. "ladies were *tall and lean*, but that he did not look at them enough "to know justly the traits of their faces." In another part of his deposition he says, "That it was the *eldest* of the two ladies who was in — 789, I. "the coach with the gentleman when the child was brought." In short, there is not the least vestige of Mrs. Hewit in any one of their depositions, unless what may seem to be contained in that very faint description given by Madame Dumenil, of one of the ladies being *plus corpore*, i. e. not so slender as the other.

The next circumstance to be attended to in the enlevement, is the Description of state or condition of the child when carried off. In this article, a very child. remarkable difference appears between the son of Lady Jane Douglas and the child of Sanry. By the baptismal extract, in process, it appears, that Sanry's child was born upon the 19th March 1748; his Purs. pr. 802, father says expressly, that he was a healthy child; the mother says he C. had no disease; and Etienne Greure says, that the child was hand- Def. pr. 695, some, and appeared to be in good health. This child, therefore, as he B. was four months older than Lady Jane's children, and is said to have had good health, and not to have been any way diseased, was very unfit to be substituted in place of the weak child Sholto, as he ought to have appeared even stronger and further advanced than the defender. It is clearly in proof, that the child brought to Reims in 1749, had a very weak and delicate appearance, which did not at all correspond with the child of Sanry, but answered very well to the description which had all along been given of Sholto. This the pursuers have proved by one of their own witnesses, the Abbé Oneil, who says, "That the child brought from Paris was *very weakly*, and that the — 764, C. "deponent having remarked that to Lady Jane, she answered him, "that the child, at coming into the world, was so weak, that she had "been obliged to leave him at nurse in the neighbourhood of Paris, "where, she added, the child had been taken very ill care of. — Madame Mailfer depones, "That, in fact, they brought a child, who Def. pr. 603, "appeared E.

“ appeared to the deponent, when she saw him the day after his arrival, *weak and delicate*, fair and very white, resembling his mother as much as one could observe at that age;—and that, moreover, she cannot say, if the two children appeared to be of the same age, seeing the one was strong, *and the other delicate*.”—Chevalier Douglas, after deposing to his having seen Lady Jane at Dunkirk with her two children, says, “ That the deponent then had often both the said children upon his knees: that they were both boys, and the eldest was pretty robust, but the other was *extremely delicate*, resembling his mother as much as possible.”—Mrs. Glas deposes, “ That Sholto had no mark on his face, or near his eyes. Deposes, that Sholto *never was so strong and sturdy as the defender*, but that he was, after he came to England, a healthy sprightly child.”—Mrs. Maclean deposes, “ That Sholto was not so big and strong as the defender, and was a *great deal more delicate*.”—Mrs. Skene deposes, “ That Sholto was not so strong and big as the defender, and *was delicate and tender*.”

The Sanry people further say, that their child was beginning to speak and walk. Madame Sanry deposes, “ That he walked feebly, and lisped some words, such as papa, mama, and other such words.”

Sanry, the husband, concurs as to his lisping some words. The contrary is proved to have been the case of Sholto; he might perhaps be able to move a little with leading-strings, but he could not walk by himself till he came to England; and it is in proof, by witnesses of character, that the first articulate sound he ever uttered, was in the house of Mr. John Murray in London, where Lady Jane and her family lodged, upon their return from France. Mr. Murray deposes, “ That neither of the children could speak or walk when they came to this deponent’s house, but that Archibald seemed to this deponent to be the stronger of the two. Deposits, that he, this deponent, being particularly fond of the child Sholto, and having been used to call him his *daty*, (meaning his darling) the said word *daty* was the first word, which this deponent remembers, the said child Sholto to speak, and this some time after he had been in this deponent’s house; and that the next word which this deponent heard the said child Sholto speak, were *old cloaths*, which words this deponent first heard the said child Sholto speak, while in his, this deponent’s, arms, at the window, near to which a man was calling old cloaths.” Had the child lisped or muttered any French words, which he certainly would have done, had he been the child of Sanry; this circumstance must have been so remarkable, as to strike Mr. Murray, as well as the servants, or others, who had occasion to see him at that time.

It is proved also, by sundry of Sanry's neighbours, that the child had a mark of the small-pox near one of his eyes. Madame Grevaine depones, "That this child had a mark of the small-pox, *very visible*,^{Purf. pr. 734, H.} "at the side of one of his eyes, but does not remember on which "side." The same thing is deposed to by Madame Laupin, and though the Sanry family have been pleased to deny upon oath, that the child had any mark, or any infirmity, or disorder* about him, yet, it appears, from one of Mr. Stuart's private memorials, that they originally acknowledged this mark near the eye; and, likewise, that he was subject to a sort of inconvenience, or disorder about the breast-bone. In a minute of discoveries produced by Mr. Stuart, there is the following passage: "La Dame Sanry dit, que l'enfant, qu'elle avoit^{Def. pr. 1030, F.} "nouri elle même, n'avoit pas été fevré qu'environ un quinzaine^{786, A. 798, I. 803, A. 802, B. 799, B. 293, C.} "de jours, quand cette incident arriva; qu'il avoit eû la petite verole, et qu'il avoit la marque d'une seule verole à côté d'un des "ses yeux, laquelle marque n'étoit pas fort distingué, et que peut-être elle sera remplie avec l'age; *qu'il étoit sujet de laisser tomber l'os de la poitrine quelquefois*, et qu'elle avoit montré à la dame comment le lever.——Madame le Gris dit, que la dame examinait bien l'enfant, et comme l'enfant étoit *sujet à l'incommodité de laisser tomber l'os de la poitrine*, elle, Madame le Gris, lui enseignoit comment le lever."

1031, A.

From the proof it does not appear, that Sholto was either subject to any infirmity of this kind, or had any mark on his face, on the contrary, Isobel Walker has expressly said, that he had no mark; and none of the other witnesses, though they mention his delicacy, have pretended to say, that he had any mark on his face, or was subject to any particular infirmity.

These circumstances show, in the first place, a manifest difference between the two children, and, 2dly, a most unfair bias on the part of Sanry and his wife, to make them correspond. And there is a pretty remarkable fact deposed to by Madame Dumenil, which, if true, is totally irreconcilable with Sir John Stewart's supposed plan in carrying off Sholto. She says, the father told her mistress, Madame Selle, that they had given away their child, "Because they were burdened with children, and that the gentleman had even proffered to take the charge of *the most embarrassing* of their nine children, *without*^{Purf. pr. 789, B.} *having made any choice among them.*" Indeed, the taking a child four months older than the supposed twins, and who was a healthy child, was equally inconsistent with every account, which he or

* Aucun incommodité.

or Lady Jane had till that time given of the birth. At the same time, that this older and healthier child should have the appearance, when brought to Reims, of being younger, and remarkably weak, puny, and delicate; and, with-all, the very picture of Lady Jane Douglas, is a miracle, which will not easily be accounted for.

Time of
enlevement.

3dly, The pursuers have entirely failed in showing the application in point of time. With regard to this it is plain, that little reliance can be had on the parole testimony, with regard to the age of the child, or the particular time of the year when the enlevement happened. Most of the witnesses make the child's age from twenty to twenty-two months, some of them seem to think he was much older. He was born on the 19th March 1748; and should this vague method of deciding the question be followed, the one computation would bring the enlevement into the year 1750, the other would carry it no further back than the end of November, or rather the beginning of December 1749, as it is not customary to reckon the age of a child per advance.

Purs. pr. 759,
D.

The pursuers are necessarily confined to the month of November 1749. It is certain, that Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, set out from Reims to Paris after the 2d November, and it is equally certain, that they had returned from Paris to Reims before the 29th of that month. They received payment of the sum in Lord Morton's bill on the 2d November, and it was upon receiving this supply, that they set out for Paris, in order to bring Sholto from the nurse, and afterwards were enabled to prosecute their journey to England. They travelled to Paris in a chaise belonging to Sir Walter Rutledge, with two hired horses; they spent but a few days in Paris, returned in the same equipage to Reims, and they left Reims, on their way homeward, on the 29th of that same month. These facts are now ascertained, and acknowledged on all hands, though it was not till very late in the cause, that by the recovery of letters, and particularly of a letter from Sir John Stewart to Madame Andrieux, dated, St. Omer, 10th December 1749, it was fixed, that the 29th November was the precise day of their departure from Reims for England. Your Lordships will therefore observe, that the pursuers must necessarily prove, Duverne's enlevement to have happened between the 2d and 29th November, allowing also, some days in travelling from Reims to Paris, and back again.

But they are still further limited in the article of time, as will be afterwards shown; and, indeed, by their own admission, they are confined to a *very few days*, in the middle of the month, within which, they must suppose Sir John Stewart, Lady Jane, and Mrs. Hewit, to have been at the Croix de Fer, and to have been guilty of the

the enlevement. At the same time, from written documents it is extremely clear, that the enlevement did not happen within that period, which they are now obliged to fix on.

These written documents, which are the only evidence that can be in the least relied on, are two-fold: 1mo, An entry in the journals of police, of date 10th January 1750, mentioning a letter from the curé de St. Laurent, to the lieutenant of police, with regard to the enlevement of a child out of his parish, by a person called Duverné. 2do, Another entry in the record of police, of date 21st November 1749, bearing Duverné and his wife and sister, to be lodged at the Croix de Fer.

It has already been explained, that though the entry of guests to an hotel is marked in the police books, yet their continuance in, or departure from, the hotel, is not registered; and therefore it is impossible, at this distance of time, to say what precise number of days or weeks Duverné and his family may have lodged at the Croix de Fer. The widow Selle and her two servants seem to think that they were only there six or seven days. But this fact cannot be taken on their memories; and indeed if it be true that they entered on the 21st November to the Croix de Fer, as is probable from the above article in the police-record, it is pretty certain, from the other article in the police-journals, that they remained above six weeks in the hotel; for the date of the curé's letter to the police, shows plainly that the enlevement must have happened towards the end of December, or beginning of January.

That the curé would be immediately informed of this enlevement, happening under his eye, and in some measure assisted by the *focurs de la Charité*, subordinate to him, is highly rational to be presumed.—That soon after receiving information of it, and enquiring into the circumstances, he would write to the lieutenant of police, is still more so; for the matter not only required dispatch, but it would have been absurd to have given the lieutenant of police information concerning any persons, more especially foreigners, at a distant period of time, after they had escaped out of his jurisdiction.—If then the curé did not write till the 10th January 1750 to the lieutenant of police, the presumption in common sense must be, that this enlevement happened but a few days before; and if so, it brings the period of this enlevement to the end of December or beginning of January, at which time Sir John Stewart, with his lady and family, had arrived in England.

But the matter does not rest upon presumption.—It is supported by legal evidence now before the court.—The curé de St. Laurent, after mentioning that Duverne had applied to him for a list of poor people in his parish, depones, “ That the deponent heard no more of the

Parl. pr. 772
F.

—G.

“ affair till *some days after the carrying away of the child* of Sanry’s
 “ wife, of which child’s being carried away the deponent learned, but
 “ *does not recollect from whom he heard it* :—presumes it was from the
 “ sister Reine, or her companion, who had told him before that the
 “ said gentleman had distributed some charities when he had been in
 “ her apartment ; that *then* the deponent sent to seek Sanry’s wife,
 “ in order to learn from her all the circumstances of the carrying
 “ away the said child, and that she told him that she had carried her
 “ child to the Croix de Fer, in the street St. Dennis, and had left him
 “ there ; that the deponent believes (without being absolutely sure of
 “ it) that Sanry’s wife, or the sister Reine, told him, that the child had
 “ been left with a gentleman and ladies who were strangers ; that they
 “ added in the time to the deponent, that Sanry’s wife had gone the
 “ next day with an intention to take back her child, but that, finding
 “ him near the fire, and well cared for, she had left him ; that she re-
 “ turned the day following, but learned that the persons to whom she
 “ had given her child were gone away, and that she was told
 “ that they were gone to St. Germain, where Sanry went to seek him,
 “ and that not having found him he run through several other
 “ places to no purpose ; that the deponent acquainted, by a letter, the
 “ lieutenant de police of the carrying away of this child, and believes he
 “ made him an answer ; that the deponent went afterwards himself to
 “ that magistrate’s house, to enquire if he had made any discovery ;
 “ that the lieutenant de police told him he had made none.”

From thence it is clear, and the nature of the thing speaks it, that the curé was informed of this enlevement soon after it happened.—It is true he mentions narratively that he had been informed, Sanry the husband had gone to *St. Germain and other places*, in quest of his child ; but from the proof it is ascertained, that Sanry went to St. Germain the very day after the departure of these strangers from the Croix de Fer.—He returned to Paris the same day, upon not finding them, remained there ten or fifteen days, when he set out upon a very long expedition by St. Germain to Rouen, Havre, Dieppe, &c. partly in quest of his child, and partly in the way of his profession as a rop-dancer ; which expedition having taken up six or eight months, it is plain that the curé’s letter must have been wrote long before the result of Sanry’s enquiries at these other places was known.—This observation will serve to clear up a passage in Madame Sanry’s oath, who has improperly blended the time of her being sent for by the curé with her husband’s journey, when her meaning is obvious and plain, that she was sent for by the curé soon, or a short time after her child was taken away.—The passage is in these words : “ That thereupon
 B. “ the

“ the deponent's husband went the next day (i. e. the day after the en-
 “ levement) to St. Germain; that he found there neither the persons
 “ nor his child, and that afterwards he travelled through different
 “ sea-ports with as little success.—That, *two or three days after*, the
 “ curate of St. Laurent sent for the deponent.”

This passage is indeed explained by Mr. Stuart's minute of discoveries, 13th June 1763.----Madame Sanry says, “ That the *next day*, or Def. pr. 745.
 “ the day thereafter, her husband (Monsieur Sanry) went to St. Ger-
 “ main, and enquired after Monsieur Duverné, and his (Sanry's)
 “ child; and, in a few days thereafter, set out for Rouen, and went
 “ by Havre, Dieppe, Caen in Normandy, &c. making enquiry every
 “ where for these strangers, without being able to find them:—that a
 “ *few days after the child's being carried off*, the curé of St. Laurent
 “ sent for Madame Sanry, reprimanded her for having given away her,
 “ child in that manner, and told her, that he would cause enquiries
 “ to be made, and that she might come back to him in eight or ten
 “ days, to know what they would produce: that in ten or twelve days
 “ she went back to the curé's house, and learned from him that he
 “ could get no intelligence.”

That the curé, soon after this information, wrote to the lieutenant-general of police, seems evident from a passage in his second deposition, when adduced for the defender.—At this time the period of his writing to the police had been discovered, which it appears was forthwith communicated to him by the pursuers agents at Paris.—But, however little inclined to favour the defender, if not desirous to assist the cause of the pursuers, he deposes, “ That after the great number of years Def. pr. 689;
 “ that have passed since the affair of carrying off the child about which D.
 “ he has deposed, he cannot exactly recollect how long after being
 “ informed thereof at the time it happened he delayed to write of it
 “ to the lieutenant-general of police: that he is persuaded *he did not*
 “ *long delay writing* about it to that magistrate, after it came to his
 “ knowledge, considering that the nature of the affair required *dis-*
 “ *patch*; but that he cannot condescend precisely upon the number of
 “ days that may have passed, though he believes, without however be-
 “ ing certain, that there could not have past more than *three or four*,
 “ *or five days, or perhaps fewer.*”

The pursuers may possibly quote, in opposition to this passage, another in the same oath, in these words: “ That he believes it was not till after be-
 “ ing informed by Madame Sanry herself, of the circumstances of the car-—691, B.
 “ rying off of her child, that he wrote to the lieutenant-general de police.
 “ Depones, that he believes, *though he is not very sure*, he mentioned in
 “ his letter to the lieutenant-general of police, that the person who
 “ carried

“ carried off the child said he was to go to St. Germain, and from
 “ thence to Rouen; but that he could not be found in either of these
 “ towns; and that they could not even find at Rouen, a place of
 “ the name mentioned by this person.” The deponent adds, “ That,
 “ (as he has just said) he may very possibly be mistaken with respect
 “ to these circumstances.” From whence it will be argued, that the
 curé did not write till after Sanry had returned from Rouen.

Def. pr. 691.
 D.

6-1032, E, F.

But to this a variety of answers occur. In the first place, it is said, even by the curé, with doubt and hesitation. 2dly, What influence the finding the date of his letter in the records of police may have had, shall be submitted to your Lordships.—He depones, “ That, since
 “ his first deposition, Mr. Stuart (here present) has told him, that there
 “ had been found, in one of the registers of police, a note of the letter which the deponent wrote to the lieutenant-general of police on
 “ the subject of the enlevement of Madame Sanry’s child, and that
 “ the name of Duverné was mentioned in that note; but the deponent did not remember this (name) at the time of his first deposition.” 3dly, From a passage in Mr. Stuart’s journal, it is evident, that the curé, at another time, gave out, both that he had received his information from the *father*, and that he must have wrote soon after getting such information. At this time indeed the date of the letter was not found.—The passage is as follows: “ We went again to the curé de St. Laurent, with whom we had half an hour’s conversation, when he repeated to us the same things that he had told in the former conversation, with some additional circumstances, particularly that the father had travelled in search of his child about eight months, without ever getting the least intelligence of him; nor does he believe that to this day he has ever heard any thing of him.— Says, that the letter he wrote to Mr. Berreyer, lieutenant de police, was, the *same day*, or the day after, that the *father* had acquainted him of the flight of these strangers with the child; and that he had both writ and spoke to Monsieur Berreyer about this affair, and that searches were made by the police in vain.” It is highly improbable that the father would delay eight months giving information to the curé; and it is equally absurd to suppose that the curé should have wrote to the lieutenant of police to make enquiries at so distant a period. But, 4to, it is plain, that what the curé so doubtfully says with regard to Rouen, is altogether a mistake; for, it was only at St. Germain, that Sanry had any reason to expect he was to find Duverné. The way he came to make the long peregrination to St. Germain a second time, and from thence to Rouen, Havre, and Dieppe, is explained by Dumenil, in these words: Depones,

pones, " That the landlady having heard the cries of that woman, Parf. pr. 791,
C, D, E, F.
 " said to her, she was a very great fool, to have given her child in
 " that manner, that she would never see him more ; to which the mo-
 " ther answered, Pardon me, madam, they told us, that they had
 " a house at St. Germain, where they were going to pass a fort-
 " night ; that we might go there to see the child, under pretence, that
 " we were the foster-father and foster-mother. Depones, That the fa-
 " ther went to St. Germain, as he told the deponent, that he returned
 " from it the *same day* ; that afterwards he came back to the hôtel,
 " and said, that he had found nothing. The deponent adds, that *he*
 " *proposed* to the father (as the deponent himself was from Havre) to
 " *go to Havre*, to seek for his child, or to Dieppe, because, presuming
 " that they were English, and they having said, that they were going
 " to St. Germain, he imagined, that they might have pushed their
 " journey farther. to embark at Havre or at Dieppe."

By this it is proved, that Sanry made his first researches at St. Germain en Laye, in the space of one day, which was indeed sufficient for the purpose ; that upon his return from thence, he remained at Paris for ten or fifteen days, is likewise proved, after which he set out 693, A—F.
 on his second journey to St. Germain, Rouen, &c. from whence he did not return for six or eight months ; and, as it is impossible the information could be so long delayed, the natural presumption is, that he applied to the curé, during this interval of ten days, which is agreeable to Mr. Stuart's journal, and uncontradicted by the curé's oath, who, as your Lordships will observe, is not positive from whom he received the first information of this enlèvement.

It is plain, therefore, that the curé was informed of this enlèvement soon after it happened, whether by husband or wife, is a matter of no consequence ; and, if he was so informed, he has himself said, as the matter required *dispatch*, he must have wrote of it to the lieutenant of police within *four or five days after*. In order therefore nearly to fix the event of the enlèvement with the greatest certainty, it remains only to show at what time the curé wrote to the lieutenant of police, or, which is the same thing, when the lieutenant received his letter, since it is plain the enlèvement must have happened within eight or ten days of that period.

Now, that the curé wrote to the lieutenant of police upon the 10th of January, is fixed by two records of police, to the authenticity and exactness of which, as well as the certainty that the letter must have arrived of the date therein mentioned, the two following gentlemen have deponed,

6 H

Monf.

Def. pr. 775,
F.

Monf. de la Terrier, first secretary to the police, depones, " That
 " he made all possible research during fifteen days, as well in the re-
 " positories of the police, as in the different offices in the department
 " of Monsieur Puissant, first clerk of the police, who succeeded Mon-
 " sieur de Chaban, without having found the foresaid letter ; but that,
 " in the course of these researches, he found a register with four co-
 " lumns, intituled, " Registre des renvoys," beginning in the 16th of
 " July 1749, and ending the 22d of January 1750, of which book the
 " first column is intituled, " Noms des premiers commis." the second,
 " Datte du renvoy," the third, " Objet du placet lettre ou memoire," and
 " the fourth, " Observations:" which book being exhibited by the depo-
 " nent to the commissioners, there is found in it, under the third co-
 " lumn, the following article: " A letter from the curate of St. Lau-
 " rent, on the subject of one called Duverne, who has carried away
 " the child of one Sanry, under the pretext of putting him in the
 " hands of a lady of condition, who would educate him: he gave a
 " false address. Under the second column is wrote, 10th of January
 " 1750 ; and under the first column Mr. de Chaban." The fourth
 " column does not contain any observation, and remains blank. De-
 " pones, that this register was at that time kept by Monsieur de Hame-
 " court, secretary of the closet to the lieutenant-general de police ;
 " that every day that secretary wrote in the said register all the me-
 " morials, petitions and letters, which had been sent to the lieute-
 " nant-general de police ; and that, as soon as every thing was wrote
 " down in that register, the whole were sent away into the offices of
 " the first clerks, each according to his department ; that it was the
 " custom at that time, and is so still, that all these papers are sent
 " twice every day from the closet of the lieutenant-general of police
 " into his offices, viz. once in the morning and once in the afternoon ;
 " that, in the morning, such papers are sent as come in the day before
 " in the evening, or that same day in the morning, and, in the af-
 " ternoon, are sent such papers as come in that same day, from the
 " time the former were sent off. Depones, that this register, under
 " the said date of the 10th of January, is wrote in the following man-
 " ner: " In the first and second page, and the five first articles of the
 " third page, on the first column is marked, Mr. de Chaban ; the rest
 " of the third page is marked on the first column, Monsieur Huguenin,"
 " which Messrs. Chaban and Huguenin were at that time the only two
 " first clerks, to whom the lieutenant-general de police sent the said
 " papers to be distributed among his offices ; that, at the same date
 " of the 10th of January, it appears on the 4th, 5th, and half of the
 " 6th pages, that the papers were again sent to Mr. Chaban ; and,
 " as the article above inserted, concerning the curate of St. Laurent's
 " letter,

“ letter, is wrote upon the 5th page, and Mr. Chaban’s name is
 “ then marked of-new, as having the papers sent to him: the depo-
 “ nent, from thence conjectures, that this letter did not arrive at the
 “ closet of the lieutenant-general de police, till after the first time
 “ that the papers had been sent that day to Mr. Chaban’s office” The
 same witness further depones, “ That each of the first clerks, to whom Def. pr. 777,
 “ the lieutenant-general de police sent these papers, did then make, a-
 “ greeable to what is still the practice, a distribution of all the petitions,
 “ letters, and memorials, to the different secretaries of his department;
 “ that there is found, in the office of Mr. Laurent, one of the secretaries of
 “ Monf. de Chaban’s department, a register, begun the 20th of December
 “ 1749, and ending the 29th October 1750, which has been laid among
 “ the archives of the police, which the deponent does likewise exhibit
 “ to the commissioners and to the parties; and that there is found
 “ marked in that register, at the same date of 10th January, a letter
 “ from the curate of St. Laurent, against one Monsieur Duverné,
 “ who carried away a child by stratagem: that, according to the said
 “ register, it appears, that this letter had been sent to Monsieur Pouf-
 “ fet, inspecteur de police, to make the proper enquiries, &c.”

Monsieur d’Hamcourt, who was secretary in the closet of the lieute-
 nant of police, from 1748 to 1757, depones, “ That he kept a regi- — 691, 6
 “ ster in the closet of the lieutenant-general of police, from the time
 “ that he, the deponent, entered to the police, till the month of
 “ March 1750, when this register was discontinued. And there be-
 “ ing exhibited to the deponent, a volume of this register, intituled,
 “ Fifth register of transmissions, *des renvoys*, commencing the 16th
 “ of July 1749, and ending at the 22d of January 1750,” the same
 “ whereof mention is made in the deposition of Monsieur de la Ter-
 “ rier, a former witness, depones, That it is a volume of the foresaid
 “ registers, and wrote with his, the deponent’s, own hand: that this
 “ volume has four columns; and that it bears the names of the prin-
 “ cipal clerks, to whom the papers sent to the lieutenant-general of
 “ the police, were transmitted; the dates of the transmissions; the
 “ subject of these papers, and the observations thereon. And there
 “ being pointed out to him an article inserted in the said volume,
 “ dated the 10th of January 1750, which bears, ‘ Letter of the curé
 “ of St. Laurent, on the subject of a person named Duverné, who
 “ has carried off the child of a person called Sanry, under pretence of
 “ putting him into the hands of a lady of rank, who would cause
 “ bring him up: He has given a false address.’ Depones, that this
 “ article is wrote with his own hand: that, while he kept this register,
 “ he came every day to the office at nine o’clock in the morning, and
 “ remained there till one o’clock, or half an hour after one: that he
 “ returned

“ returned to the office at half an hour after three, or four o'clock at
 “ latest, and staid there till nine o'clock at night: that, in the morn-
 “ ing, he inserted in the said register, all the papers that had been
 “ sent to the lieutenant-general of police the preceeding night, and in
 “ the afternoon he inserted all the papers that came in the morning of
 “ the same day: that he every day made two transmissions to the of-
 “ fices of the police of the aforesaid papers: that the first transmis-
 “ sion was of all the papers of the preceeding night, and the second
 “ of all the papers that came in the morning. Depones, that as the
 “ aforesaid article is of the second transmission, he presumes that the
 “ letter has been sent to the lieutenant-general of police *the said tenth*
 “ *day of January before noon.*”

It being thus established, that the curé wrote soon after the enlevement, and that his letter arrived only on the 10th January, it is plain, this event must have happened towards the end of December, or beginning of January; and this fact is established by circumstances which cannot deceive, whilst nothing can be more fallacious than parole testimony, with regard to dates or durations. It would be in vain, therefore, to set up against it the testimony of the people at the inn of the Croix de Fer. It is clear, as to Madame Selle, that she gave no attention to these strangers, Duverné and his family; they were chiefly attended by her servant, La Rose, now deceased, and on that account, Madame Dumenil, the kitchen-maid, seems to have formed but a very indistinct idea with regard to them; for, it is plain from her deposition, that she fixes her observance of them, from the time of their going to see the child, which, she deposes, was the very same day they arrived at the inn; and, in that view, it is indeed true, that they remained but few days. But, in this circumstance, she is clearly mistaken, as, from all the other evidence, it appears, that they must have been some time at the inn, before going to see or getting the child. That neither this woman, nor her husband, had any accurate remembrance of these transactions, could be shown from various other particulars in their oaths, which it would be tedious to recite; and, indeed, it would be surprising, if the servants of an inn, frequented by people of all nations, should recollect, at the distance of sixteen years, the precise dates of entry and departure, and other circumstances, relating to the multitude of transient guests, who had occasion, from time to time, to be in the inn.

Purf. pr. 786,
H.

The memorialist shall only further observe, on this head, that as the Croix de Fer was regularly visited by the officers of police, who could not fail to get notice of so extraordinary an incident, so it ought to have been communicated to the lieutenant de police, much sooner than the date of the curé's letter, if it had happened so early as November;

vement; yet, after all the researches which have been made, no traces of this enlevement can be found on the records of police, sooner than the 10th January 1750.

But, in the next place, the memorialist shall suppose, that the curé's letter to the police, and other particulars relative thereto, which have been stated, were entirely inconclusive, what evidence is there that the enlevement happened within the few days to which the pursuers are necessarily circumscribed? So far is this from being proved, that every circumstance of the evidence, founded on by the pursuers themselves, shows clearly, that the enlevement must have happened *without the period* fixed on by them, and subsequent to the departure of Sir John, Lady Jane, and Mrs. Hewit, from Paris.

It will be observed, that, prior to the discovery of the letters, which fixed the departure of Sir John and his family from Reims on the 29th November, the hypothesis formed by the pursuers, and which, indeed, is the only one they could rationally form, was, that Duverné and his wife and sister, *entered* to the Croix de Fer on Friday the *twenty-first* November; that they applied to the curé on Sunday the 23d; that they afterwards, perhaps on Monday or Tuesday, applied to the Sisters of Charity; that, during the course of that week, they performed the business of the enlevement, and left Paris on Friday the 28th, or, more probably, according to Dumenil's oath, on Saturday night, the 29th.—This hypothesis was agreeable to the whole plan of their own proof. In the first place, The entry in the record of police concerning Duverné, his wife and sister, being lodged at the Croix de Fer, bears date 21st November; and this is authentick and legal evidence, so far as the regulations and customs of police are to be depended on, that they did in fact enter to lodge in the hotel on that day, or, at furthest, the night preceeding. 2dly, The application to the curé on a Sunday, and the number of days occupied in completing the enlevement, together with the time of their remaining in the inn, and departure from Paris, are all distinctly laid down by their own witnesses, in the manner which shall now be stated.

The curé de St. Laurent depones, " That it was in the year 1749 Purs. pr. 771,
H.
" that the event of carrying away Sanry's child happened, but the
" deponent does not remember exactly and personally of the date of
" the month nor the day; that he does not know the month, except
" by a conjecture, which he thus explains, to wit, that the child carried
" away was born in the parish of St. Sulpice, the 19th of March
" 1748; that Sanry's wife told the deponent that the child was twenty
" months old, or thereabouts, when it was carried away, which ne-
" cessarily brings the time of its being carried away to the month of
" November 1749; that the deponent places the date of the day of
" that

“ that month by a second conjecture, to wit, that, according to the
 “ register of police, one Monsieur Duverné was at the Croix de Fer
 “ the 21st of November 1749; that he staid only seven or eight days;
 “ the deponent is sure, that the gentleman of whom he is going to
 “ give an account came to his house on a Sunday, or holiday; that
 “ from the 21st to the 28th there was no holiday, and only one Sun-
 “ day, which happened on the 23d, from whence it follows (sup-
 “ posing that Monsieur Duverné did enter at the Croix de Fer the
 “ 21st, and that it was the same person who came to the deponent’s
 “ house) that that person came to the deponent on Sunday the 23d
 “ November. Depones, that on that date, thus explained, a per-
 “ son came to the deponent’s house.”

Purs. pr. 789,
 G.

Dumenil depones, “ That the stranger gentleman and two ladies
 “ lodged in the inn four or five days, and that, in the course of the
 “ two first days, that stranger gentleman came down to the kitchen,
 “ to ask the people of the kitchen if they did not know some poor per-
 “ sons who had need of assistance? that they answered him, that he
 “ behoved for that to address himself to the curate of the parish; that
 “ the deponent learned afterwards, from the father of the child, that
 “ this stranger gentleman went to the house of the curate of St. Lau-
 “ rent, who directed him to the father of the child, of whom the de-
 “ ponent is going to speak. Depones, that the deponent saw the child
 “ brought to the hotel.”——In an after part of his oath he says,

—791, C.

“ That the day after the departure of these strangers, which was a
 “ Sunday, the father and mother of the child carried away, came to
 “ the hotel to see their child, and, being told that he was gone
 “ away with these strangers for St. Germain, the mother fell a
 “ crying.”

—787, E.

The woman Dumenil also depones to their having staid in the inn
 five or six days at most, and that they went away in a hackney-coach

—792, G.

between eleven and twelve o’clock at night. Madame Selle says, they
 staid in her house six or seven days, or thereabouts. From the deposi-

—778,

—779,

—795,

—796, &c.

tions of Le Gris and the Sanry people, it appears, that, between the
 time of the gentleman’s first coming to the house of Sanry, and his
 departure with the child from the Croix de Fer, about four days in-
 terveened.

The memorialist does not admit the facts, as deposed to by these
 witnesses, but he is here considering, what the pursuers themselves
 have endeavoured to prove, and the import of it is plainly this, that
 Duverné and his family came to the Croix de Fer on the 21st, which
 was a Friday; that, on Sunday the 23d, he went to the curé; that
 on Wednesday, the 26th, he went for the first time to the house of
 Sanry; on Thursday, went in company with the lady, and bargain-
 ed.

ed for the child ; on Friday, carried it home to the Croix de Fer ; on Saturday, the 29th, the father and mother visited the child at the inn, and that same night, between eleven and twelve o'clock, the child was carried off from Paris. The precise day of applying to the Sisters of Charity, and of going for the first time to the house of Sanry, is not indeed pointed out, but, in all probability, it must have been within a day or two of the visit to the curé, and as the curé talks very positively, of a Sunday being the day on which Duverné applied to him, and Dumenil also fixes on the night between a Saturday and a Sunday, for the departure of the strangers, who are said to have been only about a week in all in the inn, the four last days of which were occupied in the enlevement ; the above seem to be as nearly, as can be gathered, the very days fixed on by the witnesses, for the several transactions of Duverné.

That the enlevement could not have happened sooner than towards the end of November, is further established by their own accounts of the child's age, which the woman Sanry makes to have been twenty months, the father, between twenty and twenty-two, and Madame le Lanou, sister to the child carried off, says, he was then twenty-one months old ; and, taking the lowest of these computations, he was not twenty months old till after the 19th November.

Indeed, the facts which the pursuers have thus been at so much pains to establish by their witnesses, are, in substance, the same with what they had all along laid down in their private journals, in their Monitoire, and in their condescendance to your Lordships. The journal lately printed contains the following passage: May 26th, 1763, " Went again to the curé at St. Laurent's, at five o'clock, when I had half an hour's conversation with him. He told me, that since my last visit, he had been very much occupied in his function, which prevented his making any considerable progress in our affair ; that he had not seen the aubergiste lately, but hoped she was making search for her *livre des logeurs*, and for the garçon, who then served her ; that he had been recollecting the particular date of his receiving the visit in the year 1749, from Monsieur Duverné, and thinks it must have been on Sunday the 23d November, for this reason, that he remembers it was on a day of fête, for he himself was but a few minutes returned from officiating in the church, when Monsieur Duverné paid him the visit ; that, as it appears, by the registers of police, that these strangers *entry* to the auberge Croix de Fer, was upon the 21st November ; he has been looking back into the kalendar, and finds, there was no other day of fête for eight days after the 21st, excepting the 23d November, which was a Sunday, and as the aubergiste remembers, that their

" stay

Purs. pr. 798,

G.

— 799, G.

Def. pr. 694,

A.

Purs. pr.

1076, I.

“ stay in her house was in all but six or seven days, this shows, that
 “ the visit he received, must have been on Sunday the 23d:
 “ and, in combining circumstances, he thinks their departure must
 “ have been on Friday the 28th. Thus, their entry to the auberge,
 “ was on *Friday the 21st*; how they were employed upon the Satur-
 “ day, does not appear. On the Sunday, Monsieur Duverné paid his
 “ visit to the curé, asking a list of the pauvres, under the pretence of the
 “ charitable, disposition of a lady of fashion, who wanted to take care
 “ of a child. On the Monday he went to the soeurs de la Charité,
 “ distributed aumones, and got a list of the pauvres. That same day
 “ went to several different houses, where there were children, and at
 “ last went to the house, where he found the child in question, whom
 “ he chose out from the rest of the family, and said he was to return
 “ next day about it. On Tuesday went again to that house, used
 “ many arguments, and charitable pretences, to prevail upon the fa-
 “ ther and mother to part with him, who at last consented, and he
 “ gave them, that day, eighteen livres to buy some cloaths for the
 “ boy, and agreed, that he was to be brought to the auberge next
 “ morning. The father and mother accordingly bought some cloaths,
 “ and on the Wednesday, the child was carried to the auberge, the
 “ father and mother, and another woman, accompanying him
 “ there. On Thursday, the father and mother, uneasy at having aban-
 “ doned their child in this manner to strangers, went to the auberge,
 “ with an intention to bring back their child. They found him very
 “ well cloathed, with a piece of biscuit in his hand, and though they
 “ spoke of taking him back, the speeches of the monsieur and dame
 “ turned them from that purpose, and they reasoned likewise with
 “ themselves, “notre enfant cependant est bien,” seeing him so
 “ well taken care of, so they desisted from asking him back.
 “ On Friday morning however they were taken with another fit of
 “ uneasiness about abandoning their child, and returned to the au-
 “ berge, determined to bring him back, but they found this day, that
 “ these strangers had decamped. By this means, it was *Friday the*
 “ *28th*, that they left the auberge, and probably left Paris that day.
 “ The curé thinks, that probably they would go that night some
 “ leagues upon the road to Reims, to wait for the stage-coach,
 “ which was to leave Paris on Saturday morning the 29th.”

In the Monitoire it is said, “ That they went to lodge on the 21st
 “ of the said month of November, under a fictitious name, at the
 Def. pr. 717, “ Croix de Fer, rue St. Denis, where they lived five or six days, dur-
 A. “ ing which period they carried off a child, &c.”—In the condescen-
 dance,

dance, it is offered to be proved, that, subsequent to the 19th November, they came to the Croix de Fer, where they were lodged *on the twenty-first*, after which period the enlevement was performed; and, that the business of the enlevement took up four days, exclusive of the day on which the curé was applied to.

Such was the hypothesis formed by Mr. Stuart himself, and by the curé, even before the proof was adduced, and it agrees entirely with the facts since brought in evidence, with this variation only, that Mr. Stuart and the curé, by crowding the events a little too much, have supposed, that Duverné applied to the Sisters of Charity the very next day after being with the curé, and that he left Paris on the Friday; whereas, it is more probable, that the application to the Sisters of Charity, was not till the Tuesday or Wednesday; and Dumenil, so far as his evidence can go, fixes on Saturday night for the departure.

This hypothesis was indeed formed, and the plan of the proof fixed on, before it was known by the pursuers, that the 29th of November was for certain the day on which Sir John Stewart and his family, set out from Reims for England. This is now admitted, and it is equally undeniable, that the Duverné, who set out from Paris at 12 o'clock at night on Saturday the 29th, (or even supposing it to have been Friday the 28th) could not be the same person who left Reims for England, on Saturday the 29th. Def. pr. 1036 E.

The pursuers were forced to admit this in the pleading, and to betake themselves to an entire new ground, never before touched upon, and in flat contradiction to the whole tenor of their own proof.—They now insist, that, notwithstanding the date of the police-record, Duverné and his family *may have been* at the Croix de Fer *before the twenty-first* November, because, by the forms of the police, the date prefixed to each article in the record, is not the date of the person's entry to, or actual residence in the hotel, but only the date of the inspector's report; that, though it was indeed the duty of the inspectors, to make their rounds every day, yet, in fact, they were seldom so punctual; that, from the record of police, it appears, that there was no report from the Croix de Fer, between the 14th and the 21st, and that Duverné and his family *may have come* to the Croix de Fer, any time between these two periods, perhaps on the 15th, which will answer Sir John Stewart's time of being at Paris, because, if he entered on the 15th to the Croix de Fer, your Lordships may presume, that he applied the next day, being Sunday, to the curé, and that, having performed the enlevement in the remaining days of that week, he set off, agreeable to Dumenil's deposition, on Saturday night, the 22d; which

which would bring him to Reims about the 26th, two or three days before Sir John Stewart's departure for England.

Answer.

Were your Lordships, in a matter of this kind, to decide upon *what may be* the case, the memorialist would beg leave to say that the presumption is entirely against the pursuers. The inspectors of police are obliged to make their rounds *once every day*, and to report immediately to the police what persons they find in the different hotels. It may be true that accidents sometimes happen to prevent them; for example, a feast-day, or Sunday intervening: or they may, from negligence, or from the great extent of the quarter, omit, for a day or two, to perform the duty of their office.—From the proof it appears, that the inspector, who visited Godfroi's hotel in 1748, was somewhat remiss in that article. But your Lordships will presume, where no mistake, undue negligence, or other reason is proved, that these officers do their duty agreeable to the laws and ordinances of the kingdom.

Def. pr. 723,
F.

The edict 1740, which has since been the standing regulation as to this matter, is as follows: "We command that inspecteurs go every day to the tavern-keepers houses, and those who let furnished rooms, and that they make them produce one of the two books which they ought to keep, containing successively, and without any blanks, the name, surname, country, quality and profession, of those who they lodge in their houses, and the days of their arrival and their departure; which register they are to examine and mark at each visit, under the penalty of 300 livres, to be paid by the transgressors; and this without prejudice to the other copy of said register, which the tavern-keepers, and those who let lodgings, are bound to keep, and carry the last day of every month to the commissaires of the chatelet, to be examined and signed by them; which two registers are to be marked and signed at the beginning and end by the commissaires of every quarter, before any thing is wrote in them; and without prejudice besides, to the declarations which the tavern-keepers, and those who let furnished rooms, ought to make to the said gentlemen commissaires the day of the arrival of every person at their house."

025, B.

And that in practice the inspectors of police are exact in performing their duty, appears from the following evidence.—Mr. Dupuis, an inspector of police, depones, "That the duty of inspectors of police, relative to those who keep publick-houses and lodgings, are regulated by the fourth article of the edict of the month of March 1740, and registred in the parliament chambre des comptes and court des aids, the 3d, 20th of May, and 12th of August 1740. Depones, that, according to this article, it is understood that the inspectors go themselves every day to the houses of those who let lodgings in
" the

" the quarter where each of them is distributed; but as there are quar-
 " ters very large, it happens that the inspector cannot go to the houses
 " of those who let lodgings but once in two or three days: that this
 " is also sometimes retarded by the feast-days and Sundays, on which
 " they make no visits. Depones, that at each visit, the inspecteur
 " looks at the register kept by the person who lets lodgings, which is
 " called the *register of the inspecteur*; and that he marks it, even tho'
 " no person has come to lodge in the house since his last visit: that
 " this visit is marked by the word, *vu*, (seen) the day of the month,
 " and the inspecteur's cypher or mark: that at each visit the inspecteur
 " makes an extract of the persons wrote, who have entered and de-
 " parted since the preceeding visit. Depones, that the copy of all the
 " persons wrote in the register of lodgers, are divided by the inspec-
 " teurs into three states, one for the French people, another for the mi-
 " litary, and another for the foreigners; and that these states are sent
 " daily to the office of surety: that each state bears on the top, the day
 " of the month on which the copy was made, and at every article the
 " dates of the entries and departures of the persons. Depones, that,
 " according to the disposition of the law, those who let lodgings are
 " obliged to write the persons in the register of the commissaire, as
 " well as in the register of the inspecteur; but the deponent has not
 " an opportunity to know if this is exactly observed with respect to
 " the register of the commissaire, seeing that the inspecteur only ex-
 " amines the register called the *register of the inspecteur*: that it is from
 " this alone that he makes his extract; and that he does not examine
 " that of the commissaire. Depones, that it is only within these four
 " or five years that the inspecteurs write, in their extracts, the dates of
 " the entry and departure of persons; and that formerly there was on-
 " ly one single date put at the head of each state, which mentioned
 " the day that the extract had been made; and that, as this extract con-
 " tained the names of the persons entered since the former visit, this
 " pointed out within a few days the period of their arrival. Depones,
 " that anciently, and before the period above mentioned, those who
 " let lodgings wrote the days of the entry of persons, but that they
 " did not in general write their departure; but that upon the extracts
 " neither the day of their entry nor departure was mentioned, but
 " only the date of taking the extract."—Interrogated for the pursuers,
 " depones, " That it may happen sometimes by the negligence of those
 " who let lodgings, or other causes, that some persons may have come
 " to lodge with those who let lodgings, and not be wrote into the re-
 " gister for some days after; and that then it may have even happen-
 " ed, that the person who lets the lodging, to conceal his own fault,
 " has not mentioned the date of the entry till the day that he wrote
 " down

“ down the name, although in this case it was his duty, according to
 “ the law, to mark the true date of the entry : it may even also have
 “ happened, that some persons may enter and depart, without having
 “ been at all wrote down ; but the deponent does not remember any
 “ example of this kind in his quarter. Depones, that the extract be-
 “ ing made at the same time with the revifal, during the vifit at the
 “ houfe of thofe who let lodgings, the date of the extract is the fame
 “ with that of the revifal ; and that the extract contains all the per-
 “ fons wrote in the book from one vifit to another : and a print-
 “ ed copy of the faid edict of the month of March 1740, above men-
 “ tioned, having been produced to the deponent, he has figned the
 “ fame with the commissioner, as relative to this deposition.”

Def. pr. 626, Monf. Framboifier, alfo an infpector of police, concurs with him
 E. *in omnibus.*

That the infpector, who furveyed the Croix de Fer in 1749, was
 moft exact in the execution of his duty, and that he in fact vifited the
 hotel every day, is proved by an extract which the purfuers themfelves
 have produced, and founded on from the records of police, which ex-
 Purf. pr. 529, tract bears the name of one Retter, a Swifs gentleman, of date 3d No-
 F. vember 1749, as lodged at that inn ; and, on the 4th of the fame
 month, it bears the name of Barbacheux de Bilba, a Spaniard, in the
 fame inn, which fhows, that the infpector had vifited the inn each of
 thefe days, and made his report to the police.

It is very true, this extract contains no report from that hotel, be-
 tween the 14th and 21ft November. A gentleman from Bruffells is
 marked upon the 8th, other two perfons from Germany on the 14th,
 and Duverné, with his wife and fifter, and one Cofaban, a merchant
 of Amfterdam, on the 21ft ; but it cannot from thence be inferred,
 that the infpector had made no vifits to the hotel from the 14th to the
 21ft.—He may have made vifits every day during that interval, with-
 out finding any new gueft arrived to report to the police.—The livre
 d’infpecteur of this hotel has not been found, otherwife it would, in
 all probability, have appeared, that he had done his duty as ufual,
 by vifiting the hotel, and marking the book every day, or at leaft fre-
 quently, during that interval. Neither is the record of police extant,
 which contains the natives of France at that time ; and it is extreme-
 ly probable, that this record may have contained the names of fe-
 veral perfons, as arrived at the hotel, between the 14th and the
 21ft.—Your Lordfhips will obferve, from the deposition of Monf.
 Dupuis, that the records are divided into three claffes, and there
 are only two of thefe now extant, viz. the record of foreigners,
 and the record for the military ; fo that the fingle inference which
 can be drawn from the circumftance, of no name appearing in
 thefe

these records, from the 14th to the 21st, is, that the inspector, in his daily visits, did not find that any *foreigner* or person in the *army* had arrived in the hotel, during that interval.

The presumption from the laws of police, and from the practice of the officers in general, but more particularly from the practice of this very officer, who had the charge of inspecting the Croix de Fer in 1749, is, that he visited that hotel daily or frequently, from the 14th to the 21st; that he was there as usual on the 20th, and found no alteration in the article of foreign guests; but that, upon making his visit on the 21st, he found Duverné and his family, who had entered either that day or the night preceeding.

But, in the next place, supposing it were to be admitted, that the police-record is not conclusive evidence of an entry to the Croix de Fer on the 21st, and no sooner, by what rule is it, or by what circumstance in the proof, that the pursuers draw back the entry of Duverné to such a period, as to correspond with Sir John Stewart's residence at this time in Paris? so far are they from being supported by evidence, in the hypothesis now adopted by them, that it is contradicted by every circumstance in the proof, and even by their own former allegations.—At the same time, when their new plan is considered, it will be found not to answer their purpose.—They admitted in the pleading, that the entry to the Croix de Fer could not be before the 14th, because the inspector had made a report to the police of that date, without taking any notice of a Duverné; and the question is, at what time he entered, subsequent to that date.—Here the pursuers have very little room to work upon, for they are circumscribed within the narrow limits of *one day*, viz. the 15th, on which they must necessarily suppose Duverné to have entered to the Croix de Fer, otherways their new system will come out to be individually the same with their old one; for your Lordships will observe, that the 14th November 1749 was a Friday; and as the curé de St. Laurent is positive, that the application to him was made on a Sunday, or feast-day, they must either suppose, that Duverné entered to the Croix de Fer on Saturday the 15th, and that he applied to the curé on Sunday the 16th; or, if he did not enter till after Saturday the 15th, (suppose on Monday the 17th,) it is plain, that the application to the curé could not be made till Sunday the 23d, as it appears from the almanack-royal, that there was no feast-day between Sunday the 16th and Sunday the 23d, and this just brings them back to their old dilemma.

Supposing it should be admitted, that Duverné may have entered to the Croix de Fer any time between the 14th and the 21st, the pursuers must, on the other hand, admit, that there is nothing in the proof to point out any one day of that interval more than another, unless it be the *age* of the

child; and the presumption, arising from the police-record, that the entry must at least have been *near*, if not *on*, the 21st, both of which circumstances throw the chance greatly against the first day, and in favour of the latest day; yet every calculation of chance, and every presumption from circumstances, is to be got over, in order to fix the entry upon the individual day which the pursuers think will suit their purpose.

At the same time, the memorialist can by no means admit, that their purposes are suited, by fixing the entry on the 15th; and, in this state of the argument, it would make no difference, if the entry had even been on Monday the 10th, or any other day of that week; for, it must still be supposed, that the application to the curé was on Sunday the 16th, and the business of the enlevement not finished till Saturday night the 22^d.—From Paris to Reims, at the ordinary rate of travelling, without change of horses, is a journey of three days. The chaise which Sir John borrowed from Sir Walter Rutledge's chaplain, for his journey at this time, was a heavy machine with four wheels, drawn by two horses hired from a country man near Reims; and though it is said, that Sir John hired a saddle-horse, on returning from Paris, he used it only for a few stages, and during the rest of the journey, Lady Jane, Mrs. Hewit, the child, and himself, were in the chaise; so that they could not well take less than four days; and if it be true, that they left Paris on Saturday the 22^d, at 12 o'clock at night, they must, in all probability, have arrived at Reims only on Wednesday the 26th, by which means they had no more than Thursday and Friday to remain at Reims, before setting out for England on Saturday the 29th.

Now, from the proof it is extremely clear, that their abode at Reims, after coming back from Paris, and before setting out for England, must have been much longer. Abbé Oneil, a witness for the pursuers, deposes, "That Mr. Stewart and his lady, after their return to Reims, till their departure for England, did stay only a very few days, five or six days at most, so far as the deponent can remember. Depones, that, in this interval of time, after their return, the deponent saw Mr. and Madam Stewart *three times*, including St. François Xavier's day, and that the last time, was the day before their departure for England."—The memory of this witness is indeed not much to be trusted; but the pursuers must admit the circumstance here deposed to by him, to be just as probable, as any other part of his oath.

Madame Mayette depones, "That after the arrival of the second child at Reims, Mr. and Madam Stewart remained there but a short time, *seven or eight days*, a few days in or over."

Madame

Madame Mailfer, Lady Jane's intimate friend, depones, " That she ^{Def. pr. 603, F.} had few occasions to observe this child, because Mr. and Madam Stewart departed a short time after his arrival, *perhaps a month*, or *perhaps six weeks*, she cannot recollect the time exactly."—Though this lady speaks with uncertainty, it is evident, from her ideas of the time, that it must have been considerably above a week.

Thus it appears, that even if conjecture were to be the rule, contrary to every circumstance of proof, the new system adopted by the pursuers, would as little avail them as the old one. At the same time, the memorialist does maintain, that this system cannot in any shape be regarded by your Lordships, as it is *contraary to proof*, and contrary to what the pursuers themselves offered to prove. Neither will it be of any assistance to them, that the Abbé Oneil and Pierre Vuyet, two of their witnesses, have, upon *memory*, said, that this journey to Paris happened after the *tenth or eleventh* November, and that it lasted about *eighteen days*. This would throw their return to Reims as late as the 29th.—It is in the nature of things impossible, that the witnesses can, from memory alone, be certain of these dates; and, indeed, it has been shown, that the Abbé Oneil's memory is by no means to be trusted.—Both Sir John and Mrs. Hewit agree, that they set out from Reims for Paris, soon after receiving Lord Morton's money.—Sir John says, " he thinks it was early in November.—Mrs. Hewit says it was " about the end of October;" but this she corrects, by deponing, " that Sir John, *just before* he left Reims, in quest of " the second boy, received the 350*l.* remitted to him by the Earl of " Morton."—They also agree, that they were only about four days in Paris; and Mrs. Hewit says, they were about three or four days on the road in going to Paris, and that they were four days, or there- by, in returning.—The probability, therefore, is, that they left Reims on the 3d or 4th November, and returned to it about the 15th or 16th.

It may be noticed, perhaps, that Sir John says the chaise was drove by Sir Walter Rutledge's servant, and Mrs. Hewit talks of both servant and horses as belonging to Sir Walter.—But this is a very trifling slip of memory; the chaise was certainly Sir Walter's; there could be no scheme in telling a falsehood, with regard to the servant and horses, and, indeed, it is a chance if Mrs. Hewit was informed at the time, what person they belonged to.

The circumstances, therefore, of the Sanry affair, even as deposed to by most suspicious witnesses, have no application to, or connection with, the present cause; and indeed it is incredible, that Sir John Stewart and Lady Jane, if they had gone to Paris with a design of stealing a child, would have gone to the very house in Paris where they had the best chance of meet-
ing

Parf pr. 76r,
C—E.
766, D.
768, A.

—256.

—257, D.

—258, H.

—245, K.

—257, I.

—257, D.

—259, D.

—244, E.

—257, C.

ing with their own countrymen: For your Lordships will be informed that the Croix de Fer is in the rue St. Dennis, which is the street into which travellers from England first enter. And it is in proof, that this very inn is much frequented by English people. Madame Selle depones, "That while she kept the inn of the Croix de Fer, many English and Irish came to lodge at her house." Dumenil depones, "That in the years 1748 and 1749 there came many English to the said inn." Dumenil's wife depones, "That in the years 1748 and 1749 there came English to the inn from time to time."

Purf. pr. 793, H.

—791, H.

—788, E.

As to Sir John and Mrs. Hewit's having forgot the name of the house where they lodged, during the few days they were in Paris in 1749, this is by no means an extraordinary case.—Many instances occur in the proof of British persons having forgot the houses where they lodged in Paris; and indeed it would be rather singular if one was to remember the name of an inn or publick house, in which he happened to put up for a few days, in a strange place, and at the distance of sixteen years.—See Mr. Hepburn of Keith, pursuers proof, 338, E. Mrs. Hepburn 340; General MacElligot, defender's proof, 354, A. &c.

Neither is it in the least material that their names do not appear in the police-records at this time.—There is proof that this happens very often, and in the year 1749 happened more frequently than it does now.—It is certain, Sir John Stewart was in Godfroi's house in August 1748, and his name is to be found in the *livre de depense* of that hotel, yet it is no where recorded in the police.—Many other names are in his *livre de depense* without being in the *livre de l'inspecteur*. [See Appendix p. 67.] In like manner Lieutenant Hay, Mr. Macleod, and many other witnesses in the cause, have sworn to their having lodged in hotels, and yet their names are not to be found in the records of police.

Def. pr. 450, —176.

As to Sir John's not having lodged in Godfroi's or Michelle's at this time, there are such numbers of hotels and lodging-houses in Paris, that people generally drive to the nearest; and nothing can from thence be concluded, more especially when your Lordships see, that in the month of August 1748, recently after the imposture is said to have been committed, Sir John made no scruple of returning to the house of Godfroi, and living publicly there for some days.

The pursuers also observed, that Sir John and Mrs. Hewit contradicted each other, as to the precise day of La Marre's having come to see them when at this time in Paris, the one calling it the *first* day, and the other the *fourth*; and they seem to think it extraordinary, that Lady Jane should have been so much fatigued with this journey, as to be three days without seeing her child, and then to take a head-ach, when

when going in the coach for him. These observations are altogether trifling. In the nature of things, it was impossible that Sir John and Mrs. Hewit could be exact as to the date of every little incident. Such contradictions or inaccuracies make in favour of their evidence, unless in so far as a purpose of disguise can be shown. And, with regard to Lady Jane's indisposition, it would be hard indeed if an incident so natural, and which stands uncontradicted by the proof, should be construed into a circumstance of suspicion against her.

Another circumstance which the pursuers seemed inclinable to take hold of was, that Sir John, Lady Jane, and Mrs. Hewit, having left their chaise and horses at a place called *La Villete*, went into Paris in a hackney-coach, and, in returning from Paris, took up the chaise again at the same place.

It does not occur how this circumstance can in any degree aid the pursuers; on the contrary, the account which seems to have been given by the postilion, makes against them.—Your Lordships will be informed, that *La Villete* is in reality a part of the suburbs of Paris, being not farther from the barrier, or port, on that side, than the West-Port of Edinburgh is from the Cross. It is a place at which travellers very frequently stop. There is a stand of hackney-coaches near it, and the street of the *Fauxbourg* is in reality continued that length. When Sir John, Lady Jane, and Mrs. Hewit, went from Reims to Paris in July 1748, it is in proof that several of their fellow-travellers alighted from the coach at *La Villete*. Mademoiselle Vetry depones, “ That the third day they left Nanteuil at six o'clock in the morning, they dined at Mefnil, from whence they arrived at *La Villete*, near Paris, at five o'clock in the evening, where the coachman stopped to drink a cup. Depones, that the gentleman and the two ladies dismounted from the coach, and went into the inn where the coachman stopped; that since that moment the deponent did not see them again, because the Abbé Vetry, her brother, inspector of the royal college at Paris, who was come to meet her with a coach, carried her immediately to Paris.”

Madame Audry depones, “ That this woman (i. e. the foreign lady of whom she had been speaking) made the journey from Reims to *La Villete*, at half a league from Paris, where the deponent left the coach.”

Pierre Vuyet depones, “ That the deponent has often lodged in the above mentioned inn, at the image St. Laurent at *La Villete*, and that it is much frequented by the waggoners.” Very possibly it was at the desire of the postilion himself, who was a waggoner to his profession, that he was left there with his horses.

This person is now dead, but it is said by his neighbours, who heard him talk of the jaunt, that not having seen Sir John, for some days, and turning a little impatient, he went into Paris in order to look for him; that he accordingly met with Sir John, at a hotel or auberge, in the *ruë Coqueron*, which is a great way distant from the rue St. Dennis, being quite in a different quarter of the town; that Sir John mentioned a day at which he said he would return to la Villete, in order to proceed to Reims; that he came on the day appointed, with Lady Jane, Mrs. Hewit, and the child, and after hiring a horse, and buying a saddle, proceeded on the journey. The Abbé O'neil, after mentioning some particulars of the journey, as reported to him by the chaise-man, says, "That the driver having staid there, (i. e. at la Villete) without knowing where Mr. Stewart and his lady were gone, began to be uneasy, but that walking with a friend in one of the streets of Paris, on the sixth or seventh day after his arrival at la Villete, he met Mr. Stewart, who removed his uneasiness, and told him, *what day* he would come to la Villete, to take the chaise and return to Reims."

Purf. pr. 762,
D.

767, B. Pierre Vuyet depones, "That the deponent does not positively remember how many days Levermé (the postilion) told him, the gentleman left him at la Villete, but remembers well, that Levermé told him, that he had been eight days without seeing the gentleman, and that at the end of these eight days, seeking for him in Paris, he met him in the *ruë Coqueron*; that he joined him at an hotel or inn in the said street; that he asked him why he had staid so long? Upon which the gentleman answered, that he was not accountable to him; that he might return to his inn, and that he would take him up in passing."

Now, in the first place, It is very extraordinary if Sir John Stewart was the Duverné at the Croix de Fer, that he should have appointed a day on which he was to come to la Villete, and kept it. 2dly, If he was the same person, he must have come to the Villete, in the middle of the night, which does not appear to have been the case. He bought a saddle, and hired a horse at the Villete, and the chaise-driver would hardly have omitted so uncommon a circumstance, in relating the story; if all this had been done at midnight, and in the hurry which Mr. Duverné may be supposed to have been in. 3dly, If it be true, that the coach was turned to the Apport de Paris, it is certain Mr. Duverné could not be going to the Villete, but directly away from it. 4thly, The circumstance of the *ruë Coqueron*, seems to point out a different quarter of Paris, for Sir John's residence at that time.

Besides,

Besides, why should it be supposed, that Sir John Stewart, though concerned in this enlevement, would think it necessary to change his name, more than he had done when at Paris on the former occasion? Or, what reason is there for concluding, that Duverné was Sir John Stewart, merely because he was a foreigner? It is in proof, that a Purf. pr. 149, Monsieur de Vernet, a stranger gentleman, was in the hotel de F. Poloign, and afterwards in Michelle's, in June 1749, and that he seemed to be a man about forty years old. It is further in evidence, that a Monsieur Duvernion Anglois, is inscribed in the record of police, as Record of police in process. lodged in an hotel Rue de Tournon, in the month of October 1749. Neither this person nor the former can now be traced, nor is it known, whether any ladies were with Monsieur Duvernion; but it is not unlikely, that in the month of November, he may have changed his quarters from the rue Tournon to the rue St. Dennis.

It was insinuated, that Sir John Stewart and his family must have been in a hurry when they set out for England, as they left a part of their baggage at Reims, to come after them, which occasioned Sir John's letter to Mrs. Andrieux, from St. Omer, of date 10th December, in these words: "Madame, the fellow whom you have recommended to us, for transporting our baggage, has answered your expectation, and our hopes, very ill. We departed on Saturday the 29th of November, and behold, the 10th of December, without having received the least news of our baggage; so I beg of you, Madame, to inform yourself at Blondell's house, what has happened him." Purf. pr. 759, D.

In the postscript it is said, "There is a box with our silver plate, which Madame Mayette should send to your house, for to be put upon the cart with the rest."

The fact was plainly no other than this, that they were obliged to Answer hire a cart to convey a part of their baggage, and as it could not be expected, that this cart was to keep up with the machine, in which they themselves travelled, so it appears to have been later of setting out, and did not arrive at St. Omer till some days after them.—There is not the smallest appearance of hurry in their departure from Reims, they made no secret of their route, and they staid much longer than was necessary at St. Omer, and Dunkirk, before leaving France.—It is in proof, that they had been eight or ten days at least, if not a fortnight, at Reims, between their return from Paris and setting out for England. Indeed, supposing them to have been the guilty persons, it does not appear, that they had any greater reason for being alarmed at this time, than they ought to have had every minute of their sixteen months abode at Reims; yet, during that time, they lived

lived quietly and at their ease, without symptom of guilt, or apprehension of danger.

Purf. pr.
1066, L, to
1067, C.

The true reason of their setting out at that particular time is clearly in proof.—The withdrawing the pension, which was the only fund of their subsistence, made it utterly impossible for them to live longer in a place where they had no particular connections, and could not expect to have much credit. In these circumstances, the friendly aid of Lord Morton was applied for, and obtained; Lady Jane's letter to him, of date 25th September 1749, contains these words: "I should not have given this trouble, my Lord, but that, on the unexpected shock's happening, (i. e. the Duke's withdrawing her annuity) I wrote to Lord Mark Ker, my uncle, desiring his interposition, to bring my brother to a juster and better way of thinking and acting, in regard to me, and his innocent nephews; and desiring at the same time, he would advance me three or four hundred pounds, until that wished-for period should happen, *to clear me of this place, and bring me home*, on such security, as I had to offer, which is but eventual, such as what distant view I may have, of being able one day of repaying that small sum, joined to Mr. Stewart's prospect, of being heir apparent to an entailed estate of 1200 l. a year. Lord Mark, I have this day a letter from, with a copy of what he wrote my brother; but at the same time telling me, that as he has always lived up to what he had coming in, it was not in his power to assist me."——She then goes on to solicit the same favour from Lord Morton, on the same security; which he granted.

From this letter it plainly appears, that Lady Jane's intention in borrowing this sum, was to clear her debts in France, and return immediately to her friends in Britain, where something might be done for the support of her and her family. And it would appear, that Lord Morton, when he sent her the remittance, signified his opinion, that she ought immediately to follow that plan, for, in a letter wrote to his Lordship by Lady Jane, immediately upon her arrival in London, of date 26th December 1749, she says, "My Lord, by your Lordship's extraordinary kindness and regard, when nigher relations had disappointed me in both, *I am arrived here without loss of time, as you most obligingly desired.*"

The 350 l. remitted by Lord Morton, did no more than pay the debts owing by Sir John and her at Reims, which they had contracted for the subsistence of their family, and it became a matter of necessity with them to return to Great Britain; yet, their supposed hasty departure, is made a handle of, when, in the nature of things, it was impossible for them to have done otherways.

This

This brings the memorialist to the fourth and last branch of the proof, consisting of alledged suspicious circumstances in the conduct of Sir John and Lady Jane, from which an imposture is inferred.

Upon this head, the pursuers endeavour to show, 1mo, That Lady Jane intended from the beginning to go into France; that the pregnancy was regulated by the congress and prospect of peace, and that the destination all along was to Paris, though carefully concealed.

4. SUSPICION INFERRED FROM CONDUCT.

Destination to Paris.

From the letters wrote at the time, three things are clear, 1mo, That they never meant to conceal their destination. 2do, That they altered their route from time to time, as circumstances occurred. 3tio, That when the pregnancy was first known at Aix-la-Chapelle, there was an absolute impossibility, in their apprehension, of getting into France.

Answer.

Their first intentions appear from a letter wrote by Lady Jane, from the Hague, to her acquaintance Mrs. Carse, dated 18th October 1746, in which she says, "On my arrival at this place, I made application to Mr. Trevor, the English resident here, for a pass to take me to the waters of Bourbon, being informed, since I came here, that there is no going to Aix-la-Chapelle, (where I was determined to go) because of the constant robberies committed by the troopers in that quarter, and I was the more easily diverted from pursuing my first intention of going to Aix, since it is now in a manner the seat of war, from which sad scene I am but lately come from, and was too long, too nigh a neighbour, and spectator. Mr. Trevor, mighty obligingly took in hand to get me a pass, and wrote to Mr. Van Hoey, the Dutch ambassador at Paris, for that purpose. But so goes the stream of politics at present, that, instead of getting one, which he thought there could be no mighty difficulty in obtaining, he received a polite courteous letter from Mr. Van Hoey, with an apology of regret, that the situation of affairs were such, that no pass could be allowed to any of the English to go into France."

Purf. pr. 31. L.

From this it appears, that Lady Jane's first scheme, when she went abroad, was to go to Aix-la-Chapelle, afterwards she thought of going to the waters of Bourbon, in the South of France, but was obliged to drop that scheme, and return to the first plan, of going to Aix-la-Chapelle, because there was an impossibility of getting passes to go into France. At Aix, she remained till the great resort of company to that place rendered a longer stay inconvenient.

It has already been shown, that the pregnancy was observed and known at Aix in the end of 1747, and the progress of it marked in January and February 1748, by the people in whose houses Lady

Jane resided. At the same time, the congress was not opened till the month of March, and it was not till the end of April, that there was the least prospect of a cessation of arms. The preliminaries were not settled till the 30th April, nor acceded to by all parties till the middle of May. That they could have no prospect of getting into France, when the pregnancy first was observed, is certain, and though towards the end of April, they obtained a pass, with some difficulty, to go *through France* to Geneva, yet it was not till within a very few days of their setting out from Aix in the middle of May, after the preliminaries had been signed, that they could have the least expectation of being allowed to stop in France. All this is proved in the clearest manner, by the correspondence of letters wrote at the time, between Lord Crawford and Sir John Stewart; and it is clear also, that their intention, till within a short time of their leaving Aix-la-Chapelle, was to have gone to Geneva, which was pitched upon by them for cheapness of living, and other advantages.

It has been mentioned above, that Lord Crawford left Aix-la-Chapelle to join the army about the 10th or 12th April, and the following letter, which wants a date, appears to have been wrote by Sir John to his Lordship, soon after his departure: " My Lord, I happened to meet Mr. Montague this day, and was talking to him of the pass for L. J. He told me, that neither Lord Sandwich could give a pass for Britons to go southwards, nor could the French ambassador; that he had himself wrote to the Duke of Cumberland for twenty passes for the French ambassador's suite. Marshal Bathiani's pass would do better for my lady's *passing by Luxembourg*, than even D. Cumberland's; and Marshal Saxe must give the pass for *what part of France we shall have to go through*. My Lady Jane begs, (as she applies to your favour on all occasions,) that you would procure her one from the Marshal or Duke, as will be most easily done; but it must be in my name for a family; and I shall think it strange, if the French minister will not write to Marshal Saxe for his pass. I have nothing to add; to what is in my other letter you'll get with this, but that we are miserably anxious until we learn from yourself, that you are quite easy; which I hope will happen very soon, and last very long. Adieu, my dear Lord, whilst I breathe, you have one most devoted humble servant, in (signed) JOHN STEWART. " L. J. Hopes you will soon have leisure to inclose her's in the kind letter you intend for Douglas-castle."

In a subsequent letter, of date 17th April 1748, Sir John writes to his Lordship: " We are told, and are fond to believe affairs with you are in a better way than ten days ago, when your forces were not all joined. Your army, which is respectable, makes it appear

Purf. pr. 561.
K.

—563, A.

" to us ignorants, a very bold step, *investing of Maestricht* at your
 " noses, where their army must be separated by a river, such as the
 " Maese, however much may be trusted to their bridges of communi-
 " cation ; but I forgot, I am talking out of my sphere, and to whom ;
 " an old man having nothing to add on these occasions, but his
 " prayers for the good cause, and that God may stand by the righte-
 " ous. We reckon to set out to-morrow se'ennight, but must neces-
 " sarily hear from you first, with an order as to the cassette, &c. La-
 " dy Jane offers her wishes and prayers fervently for all happiness at-
 " tending dear Lord Crawford. I join heartily in the first, and wish
 " I could effectually in the other, no one breathing being with more
 " esteem and gratitude, &c.—I should be glad to know if you conti-
 " nue the resolution of sending the running footman and horses *for I-
 " taly along with us.*"

On the 20th April, Lord Crawford writes to Sir John from Rure-
 monde, in these words : " Dear Stewart, I had the pleasure of both Def. pr. 962
 " your letters, and you'll observe, by the inclosed copy of the Duke of A.
 " Douglas's letter, that, amidst all our hurry, I have not been forget-
 " ful of my duty towards my Lady Jane ; her letter went by last post ;
 " I hope it will meet with the reception it merits. As to the other af-
 " fair of pass-ports, now the French are masters up alongst the Maese,
 " and that there seems plainly to be a neutrality as to the country of
 " Luxembourg, I'm quite persuaded there will be very little danger ;
 " but as, in all events, a pass-port from the Felt-marechal Bathiani
 " will do no harm, as well as one from the French ; it is my opinion,
 " as my Lady Jane is acquainted with Madame Le Felt-marechal, that
 " the properest method will be for her to write plainly to Madame Le
 " Felt-marechal to get one from the Felt-marechal. Should I men-
 " tion so much as the name you intend to go by, and the going *thro'*
 " *France*, I know it would be sufficient to stop it being given ; but, for
 " my part, I'm certain a pass-port from the Imperial Ambassador, Mon-
 " sieur de Faunitze, or a plain letter from him to Marechal Nighbourg
 " at Luxembourg, would be sufficient, though I am persuaded Ma-
 " dame le Felt-marechal will, with great ease, get it you : it is obvi-
 " ous, if she cannot obtain it you, it would not be possible for me ;
 " therefore I'm positive it is the best and surest way to go about it, ac-
 " cording to some of the above mentioned methods. I had got this
 " length when I received your letter, and I do not wonder you are all
 " surpris'd I have not writ ere now ; but what with an everlasting
 " hurry I have been in, and I believe can scarcely soon end, and eve-
 " ry day expecting a pass-port, which came but t'other day ; I have
 " still deferred writing, though I desired of my servants to write to
 " their friends to let you know I was safely arrived, and well. This

" I hope however will apologize with my Lady Jane, as well as all o-
 " thers for my silence. I have sent the footman I promised with two
 " horses; you will make use of them to the end of your journey, and
 " then let them, with my footman, proceed on their journey to Mi-
 " lan, in order to join my Lord Garnock. As it is impossible for me
 " to judge what he may want when he leaves you to carry him on to
 " Milan, you will be so good as let him have as much as may be ne-
 " cessary to carry him the length; and as all this is a sort of jour-
 " ney for his own pleasure, I allow him half wages till he returns,
 " which is three ducats a month, and which is all I suppose need-
 " ful further to mention concerning him. As to the remainder of the
 " money to be paid my Lady Jane, with the twenty ducats you have
 " laid out for me, I think to the best advantage, if you draw a bill up-
 " on me for the same, (adding what you may give my servant,) either
 " now or on your arrival at Geneva, it shall be punctually answered;
 " let it be payable at a fortnight or three weeks after sight. My cass-
 " et you'll please deliver to my servant Philip, and you will be so good
 " as to tell Monf. Florintin to deliver also to him eight dozen of his
 " best Champagne, as I bespoke it the last time I feed him; if it an-
 " swer, as I doubt not, he may have several commissions, let him send
 " his bill with the bearer, and he shall be paid it soon. Pray make
 " my compliments to my friend MacEllgot, and tell him if he does
 " not come alongst now with the chaise, I have ordered them, if neces-
 " sary, to leave a horse for him, and that I have not yet heard from
 " Vienna concerning the watch.--Also pray present my most kind com-
 " pliments to my Lady Jane, assure her you shall hear from me by
 " the time you arrive at Geneva. Tell Mrs. Hewit I am very much
 " her humble servant; that I see her relation Scott, and that he is ve-
 " ry well; which being in the hurry I am in is all I can think of,
 " (save the wishing my Lady Jane a good journey,) to trouble you
 " with. I shall only add, it is impossible to be with greater regard,
 " &c.

" P. S. What with writing, and being out almost all this day a
 " horse-back, I'm quite asleep.—As to news, my Lord Albemarle join-
 " ed us yesterday with a very considerable body of troops; a few
 " more will do.—Philip has orders to deliver you the books."

Your Lordships will observe from these letters that the operations of
 the campaign were still going on, and not the least expectation of a
 peace or cessation of arms; and the same thing appears still more re-
 markably from the postscript of Lord Crawford's letter to the Duke of

Def. pr. 965, Douglas, in these words: "As your Grace may perhaps incline to

A.

" know how things are likely to turn out here, I shall venture to add,
 " that I am afraid the enemy will have made too great progress in the
 " siege

" *siege of Maestricht*, before we, by the junction of all our troops and recruits, become formidable enough to interrupt their progress in their attempt upon Maestricht; but I hope we shall be able to frustrate all their other designs, and perhaps to *thrust them before the end of the campaign*." So that as far down as the 20th April, after the pregnancy was well known, and after Lord Crawford himself had wrote of it to the Duke of Douglas, the war was going on, the communication between France and Britain quite shut up, and nothing further expected by Lady Jane than an allowance to go *through Luxembourg and a part of France*, to Geneva. It has all along been argued by the pursuers, that *Paris* was the only place in the world where the scheme meditated by Lady Jane could safely have been accomplished. At the same time, as far down as the end of April, there was an utter impracticability of her getting to Paris.

On the 24th April, Sir John writes to Lord Crawford, thanking him for the passes he had procured for Lady Jane, and expressing a desire to hear from his Lordship when Lady Jane and he were settled in Switzerland. In the postscript he says: "In case Lord Garnock sends the famous watch from Vienna, it will probably come by some of Count Caunitz's messengers; in which event, I should think, if your Lordship sends word to him, it might be put into Florentine's hands, to be brought to me, October, when he comes into Burgundy."—Your Lordships will observe, that the province of Burgundy lies in the South of France, not far distant from Geneva, and altogether out of the way of Reims; and therefore it is clear that Sir John, at the time of writing this letter, must have taken it for granted that he was to be at Geneva, and not at Reims, in the month of October.

Lord Crawford, in his letter to Sir John, 1st May, says, "He (*i. e.* Def. pr. 965, Mr. Florentine) will counsel you for the best in relation to your D. journey, which I am persuaded will go on extremely well by *Luxembourg*."—Sir John to Lord Crawford, 4th May, says, "We are assured here that Maestricht surrendered yesterday, and that a *suspension* B. of arms is signed betwixt France and the maritime powers, which the Imperial Queen may accede to, or be included in, if she pleases."

From this it appears that the suspension of arms was but then first talked of. In the next letter from Sir John to Lord Crawford, of date 12th May, it appears, that Lady Jane's intention, even then, was to go to Geneva; for he says, "Lady Jane sets out for Pay de Vau Thursday next." And the same thing appears from her letter of that date to Mr. Haldane, in which she says, "I have staid here some time longer than I intended, to enjoy my good friend Lady Wigton's company; but must now leave the place very soon, having made every thing ready for my departure. The truth is, I can no longer

“ stay, where every thing is so excessively chargeable, and where I have
 “ been long since tired of remaining for so many months in a Roman
 “ Catholick country; though a league from this, every Sunday, a
 “ Protestant Minister preaches to a small congregation. Where I at
 “ present design to go, our religion is established; so, on that account,
 “ and the cheapness of provision, I’m hopeful will prove mighty a-
 “ greeable to me both in spiritual and temporal matters.”

This scheme, however, was soon after altered; Lady Jane was far advanced in her pregnancy; and now that a cessation of arms had taken place, and the communication with France opened, it was thought most adviseable to delay so long a journey, and rather to stop in some provincial town in France.—That their intention down to this period was seriously to have gone to Geneva, appears, not only from the above correspondence, but from Sir John’s letter to Mr. Robertson, merchant in Rotterdam, in the beginning of May, in which he says, “ I
 “ beg that you may, without loss of time, send me the remainder of
 “ the money I expect every day from Scotland; and at the same time
 “ let me know if you have, or can procure a *correspondence with Geneva*;
 “ *neva*; I having a particular reason for being informed as to that
 “ soon.”

The letter from Sir John to his son, of 10th July, lately produced, is further evidence of his real intention to have gone to Geneva; and at what time that intention was altered.—“ My dearest son, (says he) I
 “ would have wrote long ere now, but waited until we should fix. I was
 “ *within ten days of setting out for Switzerland*, when the preliminary
 “ articles of the peace were signed at Aix-la-Chapelle, where I then
 “ was: *that opened the way for my coming to France*; which I inclined
 “ more to, as I knew it to be cheaper and more agreeable than any
 “ other country, in regard to climate and politeness of the people.”
 It is true Lady Jane, in her letter to Mr. Hamilton, the Minister, from
 Serv. p. 37, C. Reims, 26th March 1749, says, “ When I left Aix-la-Chapelle last
 “ summer, *I set out for Switzerland*, upon the lake of Geneva.” This
 was no more than a loose manner of writing, without attending precisely to periods. Her intention certainly was to have gone straight to Geneva, till within a few days of setting out, when the peace having opened a way into France, the plan was so far altered, that she thought of staying in some provincial town in France, at least till the in-lying should be over; after which, if she found it convenient, she might proceed more safely on a longer journey.

Accordingly, upon the 15th May, Mr. Florentine, merchant at Aix, at Sir John’s desire, wrote to his correspondent, Mr. Andrieux at Reims, to know what sort of accommodation they might have at that place. This seems to have been the first time they had any thoughts of going

ing to Reims; and it is probable they were not well fixed in that intention till with n a day or two of their setting out. Mr. Andreux's answer, referring to Mr. Florentine's of the 15th May, is produced; and, as it bears date 22d May, it seems not to have arrived till after their departure from Aix. Upon the 18th May, Lady Jane obtained a letter of credit from Paul Kahr and son, bankers in Aix-la-Chapelle, upon Messieurs Tassin at Paris, for 1979 livres: and in the letter wrote by Messieurs Kahrs to Messieurs Tassin, it is said, "This lady will per-^{Perf. pr. 1032.}
 "haps *not go to Paris*; but whenever she has need of her money, she will
 "remit this credit to some merchant to be sent to you, and will draw
 "the said sum upon you, in whole or in part, at usance, or a shorter
 "term, when it will come to you." This credit, however, was afterwards changed to Sir John's name; for this reason probably, that, in whatever place they settled, Sir John might perhaps make an excursion to Paris, though Lady Jane herself had no intention of going thither. Accordingly, on the 29th May, after Lady Jane and her family had left Aix-la-Chapelle, Messieurs Kahrs wrote to their correspondents in this manner: "We have changed the credit which we had given to my
 "Lady Douglas, and directed it in favour of the Colonel Baron de Stewart,
 "who accompanies this lady. You have joined to this the signature
 "of this Seigneur; so that, *when he shall come* to dispose of the sum
 "of 1979 livres five sols Tournois, you will be so good to honour it
 "on our account, and to mark to us what follows."

1034, C.

On the 19th May, Sir John wrote to the Earl of Crawford, informing him, that Lady Jane and he intended to set out on Tuesday thereafter, and that he had been advised, to send his Lordship's servant and horses by the *Tyrole*, rather than through France. In this letter, Sir John seems somewhat uncertain, in what place Lady Jane and he were to take up their residence. "I shall trouble my good Lord, says
 "he, with a long letter *from our first halt*.—She (i. e. Lady Jane) begs
 "you will mind your promised visit, *wherever she happens to pitch*
 "*her tent*, if not attended with inconvenience." In a letter, wrote the next day, viz. 20th, Sir John says, "We are told a courier arrived here this day, with the court of Vienna's having acceded to the
 "preliminaries, &c.—We set out to-morrow morning *for Liege*, and
 "your servants, about the same time for Milan. Lady Jane and Lady Wigton send their kind compliments, and hearty wishes for
 "your prosperity, in which they are sincerely joined, by your Lordship's most obedient humble servant, &c.—My Lady Jane expects
 "some things from Scotland by provost Lindsay soon, directed to
 "your Lordship, and begs you'll order some of your people to forward them to M. Florentine, who knows how to send them to
 "her."

570.

571.

572, E.

As soon as they were settled at *Reims*, Sir John, according to promise, wrote to Lord Crawford, as follows: "My Lord, I should be much wanting in duty, (knowing the interest you take in Lady Jane's welfare) if I did not acquaint your Lordship of her safe arrival here yesterday; her liking the place, with some other reasons against fatiguing journies, have determined her making halt for some time; where no one thing could contribute more to her Ladyship's satisfaction and happiness, than to know from dear Lord Crawford's self, that he is well, and near as happy as she wishes him; for it is impossible to be entirely so in this life.——I wrote from Aix, the reasons of sending your horses and servants by the Tyrole, and the young bay's being left with Baron MacElligot and Mr. Florentine, until he should recover the cold, by which he was incapable of making the journey. We flatter ourselves, if the peace goes on, with some hope of seeing you in your way to Barege, should it be needful."

This letter is dated, Reims en Champagne June 9th 1748, and ends with this postscript, "Please to direct, to the care of Mr. Andrew l'Ainé, commissionnaire à Reims."

63, E. In September, she also wrote to Mr. Haldane in these words: "I intended, as I wrote you from Aix, to have gone to some place that was cheap, and where I might have the free exercise of the protestant religion. The *Paye de Veau* was much recommended to me for these two purposes, but the journey was too long, so was obliged to lay aside thoughts of undertaking it, and have put up here for some little time. I was informed, it was very cheap, but I don't find it so, however, it is far more so than Aix-la-Chapelle."

It is plain therefore, that the destination to Reims was not concealed from Lord Crawford, he knew Lady Jane's situation, and that there was a possibility of her not going so far as Geneva, and probably he may have known from private conversation with Lady Jane, or letters which do not appear, that in case of an opening into France, she inclined to take up her quarters for some time at Reims, or some other provincial town. Accordingly, Sir John talks uncertainly of the route in his letters, after the 12th May, and writes immediately from Reims, without making any apology for stopping at that place. At Liege too, their intention of going to Reims was openly spoke of by Sir John, Mrs. Hewit, and the servant-maids. Madame Lambinon deposes, "That the chamber-maids of said Lady, or Mrs. Hewit, told the deponent's husband, that she was going to Reims to lie-in," and the Chevalier Douglas, who likewise met with them at Liege, says, 501, B. "Colonel Stewart told him, that he had taken, or was to take, a house at Reims, to which the deponent answered, that it would do better

“better to carry Lady Jane to Paris, where she might have all the necessary assistance for her in-lying.—That Colonel Stewart answered to the above proposition, that he inclined much to carry Lady Jane to Paris, but that he was afraid he might want money.”

From this it appears, that even when at Liege, they had no scheme of going to Paris, though Sir John was advised to it by the Chevalier Douglas, and had an inclination himself to have gone that way, if it had been convenient; and, indeed, what shows clearly, that they had no intention to go to Paris, was, that they went to *Reims*, which was quite out of the road to Paris, and there took up their abode for several weeks, before they thought of going to Paris. Had their route been for Paris, and their intention to pick up children, why not go straight to that city? or, at least, to some village in the neighbourhood, from whence they might have gone in, and prepared matters at their leisure, without being at the unnecessary trouble of making such a circuit through France? If Lady Jane's pregnancy was assumed, and if it was attended with those doubtful appearances, which are mentioned by the pursuers, it was the height of madness in Lady Jane, first to go to *Reims*, and exhibit herself in that equivocal shape, then to make a journey to Paris, in order to pick up children, and immediately to return with these children to the only place in the world, where the birth ought to have been suspected. The rational scheme was to have proceeded straight by Brussels to Paris, and after picking up her child, or children, to have returned to *Reims*, or some other provincial town, where she had never before been seen, or heard of.

But what shows clearly, that there was no original scheme of going to Paris, and that they wavered for some time, and were uncertain what place to fix on for Lady Jane's in-lying, is the clear proof, which your Lordships have of an intention, at one particular period, of lying-in at the Chateau de Bedburg, in the neighbourhood of Aix-la-Chapelle. The proof of this, arising from the declarations of Madame Tewis and of Joseph Tewis, and the deposition of Joseph Tewis has already been stated, under the head of the pregnancy. At what precise time this application for the Chateau de Bedburg was made, cannot be ascertained, further, than that it appears to have been some time in the beginning of May, probably between the 4th and the 12th. On the 4th, Sir John appears, from his letter of that date to Lord Crawford, to have still had thoughts of going to Geneva. On the 12th, he seems to have resumed that intention, finding, that the Chateau de Bedburg could not be obtained, without writing to the Count de Salme, who lived at Vienna, and whose answer could not be expected for some time. And, lastly, on the 15th, the scheme

was again altered, and a letter wrote by Florentine to Mr. Andrieux at Reims. Your Lordships can never believe, that they carried on this farce, of applying for the Chateau de Bedburg, without having the least scheme or intention, at the time, to make any use of it.

After coming to Reims, it would appear that they had no immediate thoughts of going to Paris, and Lady Jane's first intention certainly was, to have been delivered at Reims. They did not halt at that place merely by way of a stage, nor indeed was it at all in the way to Paris. They took a lodging there, and intended to have resided in it; but a hint having been given to Lady Jane, no matter whether well or ill founded, that the midwives in that place were unskilful, the resolution was taken of going to Paris, where she might have better assistance.

Def. pr. 514,
and 515.

—515, C.

Purf. pr. 93,
A.

It is in proof, that upon their first arrival at Reims, Sir John applied to Mr. Querengale, receiver of the customs, complaining of the detention of some of his trunks at the custom-house near Sedan, which he said was the more inconvenient, as his lady was with child, but said nothing of their having any intention to proceed for Paris. Applications were then made to the farmers-general about releasing the trunks, but still nothing said about going to Paris, from which it seems plain, that Sir John had no thoughts of it at that time. At last, however, the resolution was taken of going to Paris. Sir John then applied to Mr. Querengale, desiring to know "if it was necessary to cause mark their trunks, or take any other precautions, in order to transport them to Paris, where Mr. Stewart then said to the deponent, Madam Stewart was about to go to lie-in." This, he says, was only three or four days before they set out for Paris; and it is remarkable, that after having taken this resolution, they were so much pressed in point of time, upon account of the advanced state of Lady Jane's pregnancy, that they set out, without waiting for those trunks, which had been detained at the custom-house, as it appears from Mr. Andrieux's letter above recited, of date 18th July, that the trunks had only then arrived.

It is impossible to account for the fancies or apprehensions of women upon such occasions. The least insinuation given to Lady Jane, that it was more advisable for her to go to Paris than to lie-in at Reims, might be sufficient to determine her, and indeed she may have had many other motives, which, at this distance of time, and after her death, it is impossible to ascertain. Mrs. Hewit has sworn, that an advice was given to Lady Jane by Madame Andrieux to go to Paris, and Lady Jane as well as Madame Andrieux being now dead, the fact cannot in any other shape be ascertained.—The pursuers have been at pains to prove, that there was sufficient assistance to be had for a woman in child-birth, both at Liege and Reims. But it is plain, that Lady Jane

Jane never intended either to lie-in or reside with her family at Liege, which is far from being an agreeable place to strangers. She had, by that time, fixed on Reims as the place of her abode, and it was no inconvenience to her in that season of the year to make such a journey, in the slow-moving vehicles of that country. Her reasons of leaving Aix-la-Chapelle are fully explained in her letters, and, with regard to Reims, it is a matter of no consequence, whether the danger, apprehended by lying-in at that place, was real or imaginary, or whether this was the only reason of going to Paris, or not. It is impossible to divine every private thought that may have occurred to Lady Jane, or every surmise which she may have heard in conversation with Madame Andrieux, or others. At the same time it appears, that Madame Andrieux was not singular in her opinion with regard to the midwives at Reims. Madame Mailfer mentions only two midwives at Reims in 1747, and says, "That the people had no great confidence either in Def. pr. 604, "the one or the other."—Depones, "That there were at the same B. "time at Reims a man-midwife, called Poufardin, who is still alive,—C. "and who was not then known to the deponent, nor to her society : "adds, that she did not know the other persons who employed them- "selves in bringing women to-bed, and that the town was *badly enough* "served in this respect."

Mrs. Gordon of Coubaudy, who was at that time in France, depones, "That she resided in Boulogne for a year, from harvest —p. 373, D. "1749, and then removed to Sens in Champagne, where she re- "sided about five years; that there were no good accoucheurs or "midwives to be got, either at Boulogne or Sens, and has heard the "same of the other province towns in France; that the deponent was "brought-to-bed twice at Sens by midwives, there being no accou- "cheurs in the place; that the midwives were far from being skilful, "and the deponent thinks she lost both her children, of which she was "brought-to-bed, as above deponed on, by the unskilfulness of said "midwives; that, in September 1753, the deponent removed to Paris "to lye-in, or be brought-to-bed of a third child, when an ac- "coucheur was recommended to the deponent, but she chused rather "to employ the midwife of the hotel-dieu, who had great practice, "and was reckoned very skilful; that she accordingly was delivered "at Paris on Martinmas day 1753, of a daughter, who is still alive, "and a very healthy child." Her husband, Mr. Gordon, concurs with his wife in all points, with this addition, "That he had occasion to —p. 376, D. "enquire in other provincial towns in France, besides those of Bou- "logne and Sens en Champagne, and found, on enquiry, the mid- "wives unskilful, and no accoucheurs; that, in his opinion, two of "his children, of which his wife lay-in, as above deponed to, having "been absolutely murdered by the unskilfulness of these midwives ; "he

“ he made a representation thereof to the chief magistrate of the place, and to the archbishop of the province, complaining of a neglect in so necessary a point of police, and thereafter removed the former deponent, Mary Forbes, his wife, to Paris, to lye-in of the child, mentioned in her deposition, at a very great expence, at least double of what his ordinary living would have been at Sens.” Any surmise of this kind, along with Sir John’s inclination to go to Paris, was sufficient to determine them, and it is plain, that Lady Jane must have had good reason at the time, as her conduct did not appear any way suspicious to Madame Andrieux or others, who were acquainted with her at Reims.

Concealment
at Paris, and
misdating let-
ters.

The next great circumstance of conduct is the supposed concealment of Sir John and Lady Jane while at Paris, and misdating letters, with a view of creating a belief that they were still at Reims.

Upon this head it was said, that the chevalier Johnston, a cousin and intimate friend of Mrs. Hewit’s was at Paris, as also Sir William Stewart, principal Gordon, Messrs. Riddoch, Pattullo, and doctor Brisbane, all of them Scots people, and yet none of them knew any thing of the birth, or of Sir John’s being in Paris, and that Sir John afterwards corresponded with Johnston, without informing him of the delivery at Paris, or that Sholto was at a village in the neighbourhood. It was also said, that Lady Jane’s own letters to this country, after her return to Reims, made no mention of the delivery at Paris, and rather conveyed the idea of a constant residence at Reims.

Answer.

Purf. pr. 26,
C.

Def. pr. 354,
A.

Purf. pr.
* 442 *. I.

Principal Gordon appears from his own oath to have had no acquaintance of Sir John or Lady Jane, and it is believed Mr. Riddoch, Mr. Pattullo, and doctor Brisbane were in the same situation. Sir John did not meet with any of these persons in August or October 1748, or in spring 1749, when he could not have the least plot in avoiding them. The only persons then in or about Paris, with whom Sir John or Lady Jane seem to have been acquainted, were Sir William Stewart, chevalier Johnston, and Mr. Stewart of Ardschiel.

Def. pr. 161,
E.

—162, D.

With regard to Sir William Stewart and his lady, though in fact they were then in Paris, Sir John must have believed them to be in Italy. Sir William depones, “ That he told Sir John at Spaw, that he was “ to return to Italy, from whence he and his lady had come the year “ before.” And it further appears, that Sir John and he had not parted on very good terms; Sir William having taxed him with throwing away his money at game, and refused to advance money to him at Aix-la-Chapelle. Sir William further depones, that he left Paris in October 1748, and went to Italy, from whence he did not return till the year 1755, and therefore it is not surprising that he should not have heard that the delivery was in Paris.

Neither

Neither is it of any consequence, that they did not meet with Johnston. It is in proof, that Johnston did not then live in Paris, but in the country. He himself depones, "That during his stay at Paris (in Purf. pr. 805, D. the 1748,) he went habitually to the house of Monsieur Nune's, as well to his house in Paris, as to his country-house at Bourg la Reine, two leagues distant from Paris, the deponent having in summer, a room in the house of the said Monsieur Nune's at Bourg la Reine, where he slept *almost every night during the summer 1748*, and did not then come to Paris, except for his affairs, which called him thither *very seldom*, and never almost lying then at Paris, although he always kept his room there.—Depones, that he saw Sir John at Paris in October 1748, and dined with him at the hotel d'Espagne, with Baron MacElligot and Mr. Hay. Depones, that he is certain, that the said Sir John Stewart did personally recommend the deponent at Paris to Monsieur Nunes, to whose house he accompanied the deponent, and that this was in the said journey in the month of October 1748. Depones, that the first account which the deponent had of the delivery of Lady Jane Douglas, was by a letter to him dated from Reims, from Mrs. Hewit, in the month of August 1748, and wrote to the deponent by his address at Paris. Depones, that the reason from which the deponent knows, that it was in the month of August, that Mrs. Hewit wrote him that letter from Reims is, because, that upon the news which it contained, of Lady Jane Douglas's delivery, the deponent wrote two letters of congratulation, the one to Lady Jane Douglas, and the other to Sir John Stewart, at Reims, and received from the said Sir John Stewart a letter of thanks, which is dated the 26th of August, at Reims, which letter the deponent exhibits, as relative to his deposition, and the same is signed by him and the commissioner. Depones, that he does not recollect at what time he learned that Sir John Stewart and Lady Jane Douglas were married, but that he believes the first notice he had of it, was by the same letter in which Mrs. Hewit acquainted him of the delivery. Depones, that he believes he is certain, that he did not see Sir John Stewart at Paris in 1749, and that the deponent made no journey that year from Paris, farther than *Fontainebleau*, where the deponent was *during the greatest part of the time that the King staid there*, not having left it to come back to Paris, till a very little time before the return of the king. The deponent does not exactly know what time the king remained at Fontainebleau in that year, but knows, that generally that residence there continues *about five weeks, beginning from the month of October.*"

805, G.

From this oath your Lordships will perceive, that Johnston lived at Nunes's, in the country, in summer 1748, when Sir John and Lady Jane were at Paris, and that he was probably at Fontainebleau in November 1749, when they again came to Paris for Sholto. Whether Sir John called upon him at his rooms in Paris, upon either of these occasions, is a fact which cannot appear. The intimacy so much talked of by the pursuers, between Sir John Stewart and the Chevalier Johnston, was no other than this; that Johnston having been engaged in the rebellion 1745, Sir John and Lady Jane were prevailed on, by means of his cousin Mrs. Hewit, whom he met with in England, to allow him to pass over in their retinue to Holland, under the borrowed name of James Kerr; and he afterwards dined with them now and then at the Hague. Mrs. Hewit sometimes corresponded with him; and having occasion to write to him from Reims, in August 1748, she, in her letter, mentioned the circumstance of Lady Jane's delivery. It does not appear that this letter was wrote purposely to give him information about Lady Jane and her children; and, in all probability, she did not enter minutely into circumstances. The Chevalier Johnston, on receiving this letter, informed Sir William Stewart of the delivery; and both Sir William and he appear to have wrote letters of congratulation to Sir John upon this occasion; and Sir John wrote an answer to Johnston on the 26th August.—From this letter it does not appear that there was any prior correspondence between Sir John and Johnston; and indeed there seems rather to have been a quarrel between them, but the connexion was at any rate so slender, that it is not at all surprising if Johnston should not appear to have been fully apprised of every circumstance relative to Lady Jane and her children. At the same time, as it is certain that he was in company with Sir John, Baron MacElligot and Mr. Hay, in October 1748; and as these gentlemen knew that the delivery had happened in Paris, and that Sir John came there on purpose to see his youngest son; it seems highly probable, that these circumstances were also known to Johnston at the time, though he does not now recollect them. Sir John's recommendation of Johnston to Mr. Nunes, was no more than a piece of civility, in order to show that gentleman that Johnston was acquainted with a person of fashion in his own country, and is no proof either of any intimacy with Johnston, or of any previous acquaintance with Mr. Nunes.

With regard to Mr. Stewart of Ardsziel, the only other person of their acquaintance then in Paris, his widow, depones, "That she has been frequently told by her husband, that he had visited Lady Jane Douglas at Paris in the 1748; that the Deponent's husband was intimately acquainted with Sir John Stewart; and the deponent was told

Purs. pr. 29,
C.

—516, H.

Def. pr. 39,
E.

" told by her husband, that, meeting with Sir John on the publick
 " walks, after he had asked Sir John for Lady Jane, that one day Sir
 " John carried the deponent's husband to see Lady Jane, who appear-
 " ed a good deal surprized, upon the deponent's husband, who was a
 " stranger to her, coming into the room: that Sir John said it was a
 " friend of his; and that, after this interview, the deponent's hus-
 " band, as he informed her, frequently visited Lady Jane: that the
 " deponent did not hear her husband mention any other person pre-
 " sent on these occasions, nor did the deponent suppose there were,
 " from Lady Jane's being not in the way of seeing company then.
 " Depones, that her husband frequently mentioned to the deponent
 " the distress Lady Jane was in to support herself and children, and
 " told the deponent, that, even out of his small funds, he made her
 " some advances to buy necessaries from market. Depones, that it
 " was after Lady Jane's delivery that the deponent's husband went
 " to visit Lady Jane as above, the deponent being told by her hus-
 " band, that he saw a child upon one of these occasions. Depones,
 " that one day, being in a coach with her husband, driving through
 " the streets of Paris, and at that time in conversation about Lady
 " Jane and her children, her husband pointed to a house, saying to
 " the deponent, that was one of the houses Lady Jane lodged at, in
 " which he had seen her; that the deponent, upon looking out from
 " the coach-window to the house pointed at, which was high, said,
 " that the house appeared to be a poor one, and that her husband said
 " it was so: that the deponent does not know what part of Paris the
 " house pointed at stood.—And, upon the pursuers interrogatory, de-
 " pones, that the house pointed to the deponent by her husband was
 " to the street; but the deponent did not know where the entry to
 " the house was, and consequently did not know whether a coach
 " could drive to the entry or not. Depones, that she was told by her
 " husband that he had visited Lady Jane in more houses than one in
 " Paris, in the 1748.—Upon the defender's interrogatory, depones,
 " that, while she was in Paris in the 1749, she never heard any per-
 " son hint or doubt, as if the twins, which Lady Jane was said to be
 " delivered of, were not her own children."—And, in the close of her
 " oath, she depones, " That, on various occasions since the commence-Def. pr. 393,
 " ment of the present process, when that came to be the subject of the F.
 " conversation, the deponent has said, that, if her husband was alive,
 " he could say more on that subject than most people, except such as
 " were present at the birth, by reason of his intimacy with Lady Jane
 " and Sir John. Depones, that the deponent herself did not see Lady
 " Jane or Sir John at Paris in the year 1749: that the deponent's
 " husband did not mention the time, that is, by months or days, in
 " the

“ the year 1748, when he first visited Lady Jane; but the deponent,
 “ from the account she had of that visit from her husband, judged it
 “ to be soon after Lady Jane had been delivered of twins, as Ardsheel
 “ had been then told.”

The account given by this witness is very circumstantial, and as she had frequent opportunities of hearing her husband talk on that subject, she cannot be mistaken. The pursuers observed, that she might be confounding periods; that her husband may have seen Sir John at Paris in October 1748, and that it is not probable he knew any thing of the birth having happened at Paris, otherways, he would have mentioned it to principal Gordon, and others of the Scots college, who appear never to have heard any thing of the matter. But as Lady Jane was not at Paris in October, the confusion of periods is extremely improbable. Neither is the negative circumstance of principal Gordon, and Messrs. Riddoch and Patullo, not having been told, or not remembering that they were told by Ardsheel the above particulars, of any consequence. It is certain, that they were frequently in company with Mr. Hay, who must have been well acquainted with the particulars of the birth, as he lived some time with Sir John and Lady Jane at Reims in 1748, and accompanied Sir John to Paris that year, when he went to see Sholto; and yet they do not remember to have been told any of these particulars by Mr. Hay.

It is equally immaterial, that Mrs. Hewit does not remember to have seen any Scotch person, of their acquaintance, visiting Sir John and Lady Jane at this time. It is easy to figure, that circumstances of this kind, might either have escaped her observation at the time, or her memory at the distance of 15 years.

The dating some of their letters from Reims, when they were at Paris, was taken hold of as an infallible evidence of concealment.

It is not easy, at the distance of so many years, and after the deaths of all parties concerned, to ascertain every motive and reason, which may have given birth to those circumstances of conduct, which now appear suspicious. These letters were not recovered till after the death of Sir John, otherwise he might possibly have explained them. In general it is certain, that they neither intended, nor was it possible to conceal from their friends, that the delivery happened in Paris.—The letter which Sir John appears to have wrote to Lady Wigton, and which she received on the 28th July, has not been recovered; but it is plain, that this letter must have been dated from Paris; as it would be ridiculous to imagine, they could have any scheme of concealing the place of delivery from Lady Wigton, who was to come immediately to Reims, to be god-mother to one of the children, and who accordingly

dingly appears to have been all along in the knowledge, that Lady Jane had been delivered at Paris, and one of the children left there.

In like manner, though the letter to Mrs. Hepburn, of date 6th August, does not bear the place from which it was wrote; this must have been a mere unintended omission, as it has the post-mark of Dammartin, and from the very next letter to Mrs. Hepburn, of date 11th October 1748, it is plain, that she knew of the delivery having happened at Paris, and of one of the children being left there, for Lady Jane talks of Sir John's having gone to Paris to see Sholto. Mr. Gordon of Coubairdy also deposes, "That he heard from Mr. and Mrs. Hepburns, of Lady Jane's having been delivered of twins at Paris." Serv. p. 32, E. Def. pr. 376, B.

Sir John, in his letter to Mr. Keith, a clergyman in this country, dated 31st August 1748; after mentioning the weak state of the youngest child, says, "By a letter I had three days ago, he thrives so well, that we begin to have more hopes than fears about him," which shows, that Sir John did not mean to conceal that Sholto was at a distance from them. —893, E.

Baron MacElligot, Mr. Douglas of Edrington, and Walter Colvill, have all sworn, that they got letters from Paris from Sir John and Mrs. Hewit, informing them of the birth. —350, B. Serv. p. 23, D. Purf. pr. 298, D.

A bill drawn by Lady Jane on Mr. Coutts, 8th August 1748, is also dated from Paris; and two letters from Sir John Stewart, to Mr. Robertson at Rotterdam, bear the same date and place. The last of these letters is as follows: "Sir, when I wrote to you this morning, advising of my having given Lady Jane's bills on Mr. Coutts, payable to Messrs. Pannier, I forgot I had the two inclosed, which I beg you may forward per the first occasion, as they are of consequence." Def. pr. 997, D. Purf. pr. 557, F.

It was said, that these letters, being on money-matters, and accompanying two bills which were sent from Paris, could not possibly have bore any other date. But this argument is not conclusive; the bills were drawn by Lady Jane at Dammartin, on her way to Reims, and might with great safety have been dated at Reims, as well as the letters themselves, which accompanied them; it is remarkable, that these bills, one of them signed by Lady Jane herself, are dated at Paris, the very day after she wrote the first letter to the Duke, acquainting him of the birth, which is said to have bore date at Reims. It is probable too, that this very letter to the Duke of Douglas, was one of those inclosed in Sir John's letter, above recited, to Mr. Robertson, to be transmitted by him along with the bills to Edinburgh, so that at the very time she is supposed to have had an intention to conceal her being in Paris from the Duke of Douglas, she sends letters and

bills to Edinburgh, which must necessarily have discovered that she was at Paris, as Mr. Coutts, her banker, in accounting with Mr. Archibald Stuart, the Duke of Douglas's cashier and agent, must have shown him from whence the bills were drawn.

It is not easy to say, what may have been the reason, that the letters to Lord Crawford, and likewise some of the letters to this country, particularly those to Sir John's son, and Mr. MacEwan, appear to have been dated from Reims. Many of Sir John's letters bear neither date nor place, where there could be no intention to disguise; and it is not an impossible case, that the error in the date of these letters, may have been accidental. Had his son complied with the invitations given him of going to France, he must at once have seen, that the delivery had been at Paris, and that his letter of the 10th July, should have been dated from that place, and, in like manner, had any of the people about the Duke of Douglas, asked a sight of the bill drawn by Lady Jane, they must have supposed, that she was at Paris on the 7th August.

At the same time, Sir John and she may have had good reasons at the time for not inclining, that either the Duke of Douglas, or Lord Crawford, should know that they had made this journey to Paris. They had borrowed money from Lord Crawford, and by their letter of the 22d July, were asking the loan of more. His Lordship might possibly have thought, that there was no occasion for making such expensive journies; and with regard to the Duke of Douglas, there were political reasons for his being very much dissatisfied, had he known that Lady Jane was at that time in Paris. Her enemies with the Duke, would not have failed to insinuate to him, that her chief errand to Paris, was to visit a certain person, whom they said, she had seen at the Abbey of Holyroodhouse in the year 1745. These, or other motives, may have weighed with her at the time; and after all, the dating at Reims, may have been for no other reason, but that they were immediately to return to that place, and they chose, that their letters might be addressed to them there, rather than at Paris, where they were to make so short a stay.

It is certain, that there could be no general plan of concealing the place of the birth, and there is not one of their letters, which says, that the birth happened at Reims, and not at Paris. Lord Blantyre, Lady Wigton, Mrs. Hepburn, and all their friends abroad, knew that the delivery had happened at Paris; and none of them were desired to conceal this circumstance in their letters to Britain. Their intention of going to Paris was openly avowed at Reims before the delivery. It appears to have been well known to the family of Mr. Andrieux, Mr. Querengale, Lieutenant Mackenzie, &c. And when they
returned

returned to Reims, every person of their acquaintance in that place, knew where the delivery had happened. It is further in proof, that when they came home to their own country, they made no secret of the delivery having happened at Paris. It does not appear, that the servant-maids were ever desired to conceal this circumstance, and Lady Jane herself told it to Mr. Loch, who took down a note of the particulars.

The next, and only other suspicious circumstance, pointed out by the pursuers in the conduct of Sir John and Lady Jane, was their neglect of taking any regular proofs when they came home, notwithstanding the suspicions that took place, but relying on the declarations from Aix-la-Chapelle, the letters of Count Douglas, and the pretended fabrication of four letters, under the name of Pierre la Marre. Conduct as to taking proofs, &c.

It may be very true, that some time after they came home, they were informed of some of those infamous reports which had been raised in Scotland to their prejudice, but it appears that people were shy of speaking to them on that subject. Even Mr. Loch, in the 1753, when he thought it necessary to inform them of some particulars which he had learnt from Mr. Archibald Stuart, did not choose to write directly to Sir John or Lady Jane, but addressed himself to Mrs. Hewit as follows: " Mrs. Nelly, I was favoured with a letter from Colonel Stewart, to which I made an answer; but as I could not at this time, nor perhaps at all, *notice to Lady Jane and the Colonel*, the chat that I am now certain is common at Douglas-castle, I trouble your ladyship with a letter, which I know you will make a proper use of. But before I begin to the subject, I assure you I condole with Lady Jane, in this affliction of poor Sholto's death. I did all occurred to me, to have the last respect paid with what decency I could, under the eye of the many great, yet unnatural and regardless relations; and I have wrote to the Colonel where the child was buried. Pray give Lady Jane comfort. She is happy in Archie, and I think there is not such a boy; his behaviour on his brother's death astonishes me; when he saw a concern in the servants looks, he told his man he wanted to speak with him; and when he got him by himself, he said, he knew his brother Sholto was dead, and shed some tears, and has never since mentioned his name. He is now settled with the servants at Maclellan's, where they have a good room, and the garden to walk in, and is very well in health, and shall want nothing I can give.—Now I come to the cause of my letter. Since you went away, I caused a particular friend talk with Archie Stuart on the cruel behaviour of the Duke of Douglas to Lady Jane. They were by themselves, and took a full collation of wine, when, it is said, people tell the truth. My friend observed

Def. pr. 885

“ to Mr. Stuart, that all the world thought the Duke of Douglas
 “ cruel to Lady Jane, and all about him unpardonable, in not putting
 “ him right. I won’t let you know what he said in his own vindica-
 “ tion, that perhaps was harsh, and has nothing to do with what I
 “ want you to know. As for the Duke of Douglas, says Archie, he
 “ has very good reason never to countenance Lady Jane in any respect,
 “ because she wanted to impose children, not her own, on his Grace.
 “ To which my friend answered, that was a story spread by the Ha-
 “ milton family, and their friends, to keep the Duke of Douglas at
 “ variance with Lady Jane. This answer put Mr. Stuart in a passion,
 “ and he swore, that General Douglas, or Count Douglas, in Germany,
 “ had wrote a full account of the story to the Duke, how Lady Jane
 “ came by the children, and that the Duke, and all of them, were sa-
 “ tisfied of the falsity of the childrens being Lady Jane’s, and there-
 “ fore, the Duke had taken care they never should have a shilling of
 “ his fortune. This conversation with Mr. Stuart I know is truth;
 “ therefore, I think some method should be taken by Lady Jane to
 “ contradict the story; and I think it would be very proper for the
 “ Colonel to write to the General or Count Douglas, and know if he
 “ wrote any such letter to the Duke of Douglas. If he refuse it, I
 “ think it would be proper for Lady Jane to inclose the letter to the
 “ Duke. I think also it would be proper to bring some proof by the
 “ testimony of the physicians, or others, that attended her ladyship at
 “ the birth, lest they should die.—These things I thought proper to
 “ suggest, but leave them to your prudence.”

v. p. 43, Sir John, in a letter wrote soon after to Mr. Loch, says, “ Sir, I
 “ had the favour of yours the 22d ultimo, and had acknowledged it
 “ sooner, but that I was showed at the same time, yours to Mrs. Nelly,
 “ with its strange contents.” After some reflexions on the death of
 —F. Sholto, he proceeds in this manner: “ What you write of good Mr.
 “ Stuart’s conversation with your friend, on the villainous stories have
 “ been invented at Hamilton, and spread at Douglas to poison the
 “ D. with wrong notions of his sister, is very surprising, but my hav-
 “ ing heard something before of the villainy and audacious attempts
 “ the interested villain and his corrupt adherents had made, to rob
 “ Lady Jane of honour, truth and character, makes this fresh forge-
 “ ry less surprising, as I know them capable of but every thing that
 “ is false; so that it can but contribute to aggrandize their worthless
 “ idol.—I even think it lucky their attempting to forge the letter has
 “ been shewed to the Duke, as coming from General Count Douglas,
 “ as he had a cousin here, the Chevalier Douglas, at this time, who has
 “ been acquainted with what is laid in the Count’s name, who is
 “ desired, and no doubt will write to Lady Jane, and inclose a letter
 “ for

“ for the Duke of D——s in hers, shewing the forgery of the pre-
 “ tended letter. This kind Providence has perhaps made use of, to
 “ let his Grace see what villains he has about him, who, from inte-
 “ rested views, to aggrandize a family, whose interest is, and ever
 “ has been, directly opposite to that of his noble family, which has
 “ been robbed by the other formerly, of valuable papers, jewels, pic-
 “ tures, &c. &c. and now are attempting, (by making his Grace be-
 “ lieve the grossest falsehoods) to dishonour his family, in attacking
 “ the honour, truth, and virtue and character, of his only sister,
 “ knowing, that by a fatal misunderstanding with her brother, she is
 “ deprived of an opportunity of detecting their monstrous villainy to
 “ the Duke, and proving her own honour, virtue, truth, and tender
 “ affection and regard to her only brother.”

The *friend* mentioned by Mr. Loch, in his letter, is explained by him in his oath to have been Mr. Loch himself ; and your Lordships will from thence see, that the story of a letter or letters from a Count Douglas, declaring the children to be supposititious, was very confidently asserted by the agents of the family of Hamilton ; and as Lady Jane thought it extremely probable, that some such false letter had been carried to the Duke, it was natural for her to shew Mr. Loch's letter to the Chevalier Douglas, who happened to be then in London, and to ask his assistance for contradicting so bare-faced a forgery. The Chevalier Douglas seems to be in a mistake, when he says in his oath, that ^{Def. pr. 502} Lady Jane showed him copies of the supposed letters from the Count ^{C.} Douglas ; it is plain, that what Lady Jane showed him was Mr. Loch's letter, for, if copies of the supposed letters had been shown to him, or put into his hands, to be sent to his cousin the Count, some notice would have been taken of them in the correspondence which afterwards ensued on this subject :—but no such thing is mentioned in any of the letters wrote either by the Count or Chevalier Douglas, or by Sir John, upon that occasion. The Count Douglas, at the request of ^{—709, &c.} the Chevalier, wrote letters which are in process, both to Lady Jane and to the Duke, assuring them, that what had been laid in his name was absolutely false. These letters appear only to have arrived in the month of October 1753, within a month of Lady Jane's death. In a letter to Sir John, then in London, of date 25th October that year, Lady Jane acknowledges the receipt of the Count's letters, but men- ^{—955, D.} tions a reason for delaying to make use of them ; and, having died in a few weeks after, it appears that the Duke's never was sent to him.

The pursuers seem to think it very singular, that the Chevalier Douglas should have been sent for by Lady Jane to London to clear up this matter, and that more material proofs should have been

neglected ; but there is no evidence, that the Chevalier was sent for on purpose about this matter ; he was then quartered at Dunkirk, and it appears that he came over for a jaunt to London, and partly, perhaps, with a view of getting payment of some money, which Lady Jane owed him. He says indeed he got a letter from Sir John before he came over, signifying that Lady Jane was desirous to pay him, and that she had something of consequence to say to him ; but all this was in the month of May, before Sholto's death, and, consequently, before Mr. Loch's letter ; and therefore, if Lady Jane was so desirous to see him, it must have been for some other reason, which does not now appear.

One observation which will naturally occur on this affair of the Count Douglas, is, that if Sir John and Lady Jane were guilty of an imposture, they could not well have a conviction in their own minds, that the supposed letter from the Count Douglas to the Duke was a forgery : on the contrary, it was more natural for them to believe, that the Count had really wrote such a letter, and, in that view, it was at least a bold step in them to write letters to the Count, and to employ the Chevalier to carry messages to him, the consequence of which might have been an immediate and publick detection of their crime.

As to the declarations taken at Aix-la-Chapelle, the memorialist has already explained how that matter stands.—These declarations did not arrive in this country till after her death, as appears from the letter Def. pr. 1006, of Mrs. Herbert, Madame Tewis's daughter, in which she delivered them to Lady Cathcart, in order to be given to Lady Schaw, who had then the care of the surviving son of Lady Jane Douglas. It would have been a singular conduct in Sir John and Lady Jane, after coming to this country, and hearing those injurious surmises about the birth of the children, had they paid so much regard to them, as to return to France and Germany to take regular proofs, in order to refute every little story that was brought them. The letter to Madame Tewis had been wrote pretty early, in order to refute the story of Lady Jane's having been seen at Aix-la-Chappelle without any marks of pregnancy. But she appears afterwards to have been advised, that such steps —370, C. were unprecedented and unnecessary.—Isobel Walker depones, “ That, “ in the year 1752, when Lady Jane lodged at the house of one Mrs. “ Maitland, in Bishop's land, in Edinburgh, soon after their arrival in “ Scotland, the Lord Prestongrange, then Lord Advocate, came there “ to make a visit to Lady Jane ; that, when his Lordship came in, the “ deponent was dressing Lady Jane in one room, and his Lordship “ was put into the next room ; that Lady Jane went into the room “ where my Lord was ; that the rooms were so situate, that the deponent “ heard the conversation, and heard Lady Jane say to my Lord, that, “ since she came to Scotland, she understood that her honour was cal- “ led

“ led in question, with respect to the birth of her children, but that God
 “ knew her innocence, and that the children were her’s; that she did
 “ not doubt, but the man-midwife, who delivered her, was still alive,
 “ and that, if his Lordship thought it necessary, she would bring any
 “ proof that should be thought proper; but that his Lordship answer-
 “ ed, that she needed give herself no uneasiness as to that matter, for
 “ that, as she and Mr. Stewart acknowledged these children, there
 “ was no further proof necessary, and that, if any person challenged
 “ their birth, they behoved to prove that they were not Lady Jane’s
 “ children.”

With regard to the four letters, or copies of letters, under the name of La Marre’s letters. Pierre la Marre, supposing there had been evidence before your Lordships, that Sir John Stewart did actually *invent* and *use* these letters in proof of his son’s birth, it would not from thence have followed, that this circumstance, however seemingly unfavourable in the conduct of Sir John, was inconsistent with the truth of the birth.—Your Lordships have full and satisfying proof, that Lady Jane Douglas was pregnant, that she was delivered, and that the defender is her real and lawful progeny. An imprudent, or even a criminal act on the part of Sir John, with a view of supporting what was true in itself, could not have the effect of rendering it false, and of defeating every other presumption and proof.—Men are often led by ignorance or folly, and sometimes by mere want of thought, and indolence of disposition, to use means not strictly regular in defending the cause of truth.

At the same time, when the case of these letters is enquired into, they will be found not to deserve the harsh construction which is endeavoured to be put on them.—The way in which they are wrote points them out to be something very different from forgeries :—they are full of deletions, words interlined, errors in orthography, and there is a postscript subjoined to one of them in a different hand from the body of the letter.—Every line of them shows, and the pursuers themselves have been at pains to demonstrate, that they are copies taken from other writings in a very imperfect manner, by a person, who either could not distinctly read, or did not sufficiently understand, what he was transcribing. Sir John Stewart appears, from his French letters in process, to have understood the language, and, though he was not accurate in his manner of spelling either French or English, it is Def. pr. 292. —297, E. plain, that, had he so much as looked at the four letters in process, he must have seen, that the word *ooke*, and others occurring in them, were erroneously transcribed.—In like manner, Lady Jane Douglas appears to have understood the French language, and it cannot be figured, that she should ever have conceived a design of passing these letters on the world, as the originals wrote by Pierre la Marre.

Neither

Neither is there the least evidence, that they were *used*, in any one instance, either by Sir John Stewart or Lady Jane Douglas. There is only one passage in the whole proof which has a tendency that way: An old lady, called Mrs. Menzies, the widow of a shop-keeper in Edinburgh, (whose testimony the memorialist does take the liberty of objecting to, because she is nearly connected with two of the tutors, and one of the heirs of line,) relates a conversation with Lady Jane, in the

Purs. pr. 80,
D. year 1752 or 1753, in which she says, "The deponent, out of regard
" to Lady Jane, and, in order to a reconciliation betwixt her brother
" and her, *advised Lady Jane* to send to France, and procure the depo-
" sitions of the physician who brought her to-bed, and of the lady
" or gentlewoman in whose house she was delivered, and of the
" maid-servant of the house, whose evidence no body could call
" in question; and might be a means to convince the Duke of Dou-
" glas, that the children were her Ladyship's, as the Duke did not
" pay a due regard to Mrs. Hewit's evidence: that Lady Jane said,
" that, following that course, was doubting her honour,---which the
" deponent advised her to get over for the good of her children, and
" that, if she had any difficulty, she might get Lord Morton to
" write over to France for these depositions, which might be left in my
" Lord's possession, and would put malice itself at a defiance to hurt
" her children, when her Ladyship's head and the Duke's were
" under ground; that, when the deponent was *urging Lady Jane*
" to follow this course, my Lady, putting her hand upon her pocket,
" said she had a sufficient evidence there; and upon the deponent's
" asking what it was, Lady Jane said, it was *a letter* from the *physi-*
" *cian*, who had *laid her*, and that she had several from him. De-
" pones, that, in the course of the conversation, Lady Jane said, that
" she knew her brother called her children *nunry-children*. Depones,
" that this conversation happened before Lady Jane went to Dou-
" glas-castle with her children."

This is a very slender, and the memorialist begs leave to say, a very incredible proof of a fact, which the pursuers were at so much pains to investigate. The very language used by the witness, affords proof almost convincing, that the words which she has put into the mouth of Lady Jane, are the words, not of that lady, but of the witness's imagination.—It is indeed somewhat singular, that this Mrs. Menzies, a woman noway intimate with Lady Jane, or in any shape connected with her, should have used a freedom, which, it is believed, no other person ever did, of telling her bluntly, and to her face, that the birth of her children was suspected, and that she ought to take proofs of the fact.—It has already been said, that even Mr. Loch, when desirous of acquainting Sir John and Lady Jane of the conversation which had

passed

passed between him and Mr. Archibald Stuart, did not venture to write directly to themselves, but conveyed his intelligence to Mrs. Hewit, to be used by her as she should think proper.—In the same way, Mrs. Carse, when corresponding with Lady Jane in May 1752, concerning the intrigues at Douglas-castle, is not quite so forward as to tell her, that the children are suspected, and that she ought to take proofs of the birth.—Yet this woman, Mrs. Menzies, holds a conversation with Lady Jane, upon a subject, of all others the most delicate, and even presses her so hard upon it, as to force from her a declaration, that she had a letter in her pocket, from the person who delivered her.

But, supposing the witness's memory to be distinct as to this matter, how does it appear that the letter hinted at, as in the pocket of Lady Jane, was one of the four now in question? or, how came one letter to be separated from the rest, and carried about in this manner by Lady Jane?—The pursuers have not been able to trace any one person to whom the four letters in question were *shown*, either by Sir John Stewart or Lady Jane, or who ever heard them appeal to these letters as evidence of the birth. Neither can it be argued, that they were used by Lady Jane, though they were found in her trunk. The fact with regard to the trunk is, that upon Lady Jane's death, Mrs. Hewit gathered together any of her letters and papers that she could find; some of them of use, and some of them absolutely useless, and threw them into this trunk, into which she also put Lady Jane's gold repeating watch; and having locked and sealed it, committed it to the care of Mr. George Lindsay, a gentleman with whom Lady Jane had been acquainted, and who lived near the house where she died, in order to be kept by him for behoof of the defender. Mr. Lindsay, indeed, when afterwards examined about this matter, seems to have thought, that the trunk had been sent to him in Lady Jane's life-time; he says: "which trunk, the deceased Lady Jane Douglas sent to the deponent's house for custody, as the deponent thinks, in February or March 1753, before she went last to London." But this is unquestionably a mistake; Mr. Loch says it was put into Mr. Lindsay's hands "about the time of Lady Jane's death." And, in a procedure before the magistrates of Edinburgh, about inspecting some papers in this trunk in the year 1759, when the Duke of Douglas was alive, the fact set forth is, "That the trunk was deposited in his hands *after Lady Jane's death*, by Mrs. Helen Hewit."—Indeed, the circumstance of the watch makes it quite plain, that this trunk was not sent till after Lady Jane's death. From one of Mrs. Hewit's letters, in process, it would appear, that this watch had been impledged to some person in London, for debt, and that Lady Jane had only relieved it upon

Def. pr. 885,
F. —882.

Serv. p. 22,

F.

Purs. pr. 362,

F.

625, C.

Def. pr. 959,

D.

her last going to London, so that she could not possibly have sent the trunk with the watch in it, before she went as deposed to by Mr. Lindsay. And the result of the whole is, that the pursuers are mistaken when they say, that the four letters of La Marre were carefully deposited in this trunk by Lady Jane, and committed by her to the care of Mr. George Lindsay, to be preserved by him as valuable papers. The trunk did in fact contain very few papers of any consequence, but a variety of letters, scrolls, message-cards, &c. which had been collected by Mrs. Hewit, in manner above set forth.

Def. pr. 411. Previous to the defender's service, the trunk in Mr. Lindsay's hands was opened, at the sight of the agents for the Duke of Hamilton, Lord Selkirk, and the defender; and the writings contained in it, particularly the four letters before mentioned, inspected by them: and, next day, Mr. Lindsay having been called as a witness in the service, a variety of letters and other papers, which had been contained in the trunk, were exhibited by him, and among others the four letters under the Name of Pierre La Marre.—The defender's council or agents had till then never heard of them: the view which they took of them was extremely superficial; nor did they consider whether they were true letters or false; originals, or copies.—In like manner, when exhibited at the service, they were not read to the inquest, nor made any part of the evidence.—It is in proof, by the oaths of three of the gentlemen who were of the inquest, that they neither read, nor heard these letters read: and indeed some of the jury would not have understood them though they had been read.—It is certain therefore that they made no part of the evidence on which the jury returned their verdict; though, as they had been exhibited by a witness on that occasion, it became afterwards necessary to print them along with the other proceedings in the service; and they were transmitted into this process by a minute of court, on an application from the pursuers, 18th December 1762.—Sir John Stewart was not present when the trunk was opened; neither did he see the letters when produced in the service, nor afterwards; nor were any questions asked at him concerning them, till he was called on to declare judicially before your Lordships.

Such being the way in which these letters made their appearance, it seems plain, that they never were in any shape used as a proof of the defender's birth.—The defender is not obliged to enquire in what manner, or with what intention they were first wrote.—Put the case, that Lady Jane, when in Scotland, in 1752 or 1753, having wrote to Sir John, then in London, to look out for some of La Marr's letters; and that Sir John, who was not very careful of his papers, nor at all times very considerate, having lost the letters themselves, imagined there was little harm in recollecting the substance of some of them, in order

to satisfy Lady Jane: or, let it be supposed, that, being possessed of the original letters, and thinking it necessary to take copies, he put them into the hands of some person, with that view, who had a smattering of the language, but, from the badness of the hand, found it difficult to decypher their contents, and who therefore has fallen into mistakes, and even anglicisms, in making out what he understood to be the sense of them. These and other conjectures may be formed, without supposing the least criminal intention on the part of Sir John. —But, in the whole of this matter, the defender speaks merely from conjecture; for he is perfectly ignorant of the real history of these letters, further than what appears from Sir John Stewart's declaration, where he says, "That Lady Jane, after her arrival in Scotland, having
 " wrote to the declarant, then at London, desiring him to send down
 " these original letters to her, the declarant gave them to be copied by
 " the said Andrew Clinton; and also gave him some French paper to
 " copy them on; and, as far as the declarant can recollect, he sent
 " Lady Jane these original letters, or the copies made by Clinton, tho'
 " he is not positive which." —And, in an after part of the declaration, he says, "That he ordered Mr. Clinton to make the copies as like ori-
 " ginals as possible; and therefore the declarant supposes, that he fold-
 " ed them, directed them, and sealed them, to render them as like the
 " originals as possible: and possibly Lady Jane may have desired to have
 " them so folded, directed and sealed, to render them more satisfying
 " to the persons to whom she was to show them: and possibly it may
 " have been done, that, in case the principals may have been lost, the
 " copies might serve in their stead: *but that Mr. Clinton will possibly mind
 " better than he does* the reasons of their appearing in this figure."

Decl. p. 15,
D.

— 11.

The memorialist's council had no opportunity of putting questions to Sir John, which might have occasioned recollection, or further explanation with regard to this matter. Sir John appears to have spoke with uncertainty, and to have had no distinct remembrance how the fact really stood. He speaks out candidly every thing that he does recollect or think concerning them; and his appeal to Clinton, a person still in life, is extremely remarkable. "Mr. Clinton, says he, will possibly remember, better than I, the reason of their appearing in this figure." It is inconceivable that he would have made this appeal, had he been conscious of a fraud, and that there was no foundation for these letters.—Clinton, indeed, upon his examination, has said, "that the letters were *not* of his hand-writing." But, notwithstanding this disavowal, there is reason to believe that they were actually wrote by him, and that Mr. Clinton's memory has failed him. He himself
 being

Purs. pr. 82,
E.

Purs. pr. 82, being further interrogated, depones, " That, in the year 1749, or the

l. " beginning of the year 1750, Sir John Stewart (then known by the
" name of Colonel Stewart) came to lodge in the same house with this
" deponent, on which occasion he became acquainted with Sir John,
" *and copied papers for him* ; but does not now recollect the titles, tenor,
" or contents of such papers, nor what languages they were in. De-

Purs. pr. 83, " 1750 and 1751. Depones, That he has some faint remembrance of
A. " *having seen a paper signed Le Marr*, but does not think that any of the

" four letters now produced to him was it, nor does he recollect whether
" it was a letter, or what other kind of writing it was." This is still
more explicitly owned by him in his answers to certain queries put to

him by the agents for the pursuers, which are in process.—His
answer to the third query is in these words : " He has some faint
" remembrance of copying some letter or paper signed by one La
" Marr, at Mr. Stewart's desire, but does not recollect one word of
" its contents, or whether there was more than one paper, at this

4pp. " distance of time." And in his oath, taken by commission from the
Tournelle, which is also in process, he says, " He has some faint re-

" memembrance of having copied some letter or paper *signed La Marr*, at
" the desire of Sir John, but does not remember a word of its con-
" tents, or if there was more than one paper, by reason of the distance
" of time ; and does not remember that Sir John was present, or that
" he dictated while the deponent copied ; and believes that he copied
" after a letter or paper *signed La Marr*, having a faint remembrance
" of that name, the only circumstance which he does remember."

Def. pr. 449, " Robet Gray, writer in Edinburgh, with whom this Mr. Clinton
F. " served an apprenticeship, has also deposed, upon inspecting the letters,
" That he could not say whether they were or were not Mr. Clinton's
" hand-writing, and wrote so to Mr. Clinton."

The fact therefore seems probable, that Clinton was really the co-
pier of these letters, though, from the distance of time, he has been
equally indistinct in his recollection with Sir John, and as he is a per-
son of good character, he must have been satisfied, at the time, that his
doing so was innocent. The writings from which they were taken do not
now appear, and your Lordships have nothing before you to show whe-
ther they were the real original letters of Pierre La Marre, or made up in
whole or in part, *ex post facto*, and from memory.—It is remarkable, that
the three first of the copies produced, bear a strong resemblance to the
story of Garnier, in the time of weaning the child, the goodness of
the nurse, and other circumstances. Sir John's correspondence with
La Marre is sufficiently established by the oaths of Isobel Walker and
other witnesses, and by the note in the pocket-book.—It seems plain,
therefore,

therefore, that Sir John, if he was really the author of the writings from which these copies are taken, did not compose them merely from invention.

That there was a foundation for them, must have appeared clear to your Lordships, even from the imperfect account given of them by Sir John, which had every appearance of candour. And it was unfair, in one of the gentlemen, to say in the pleading, that Sir John, when the letters were put into his hands, discovered symptoms of confusion.—The reverse was the case, as will be remembered by the whole court. After looking at them, by desire of your Lordships, at a time when none of the parties had ever considered, whether they were copies or originals, whether genuine or false letters, at least, when those acting for the defender, entertained no doubt of their being the true original letters of La Marre, he plainly spoke out what he remembered *or thought* concerning them. One of them, dated in October 1749, he imagined, from the hand-writing, to be an original letter of Pierre la Marre, the others, he said, were copies, made, as he thought, by Andrew Clinton, a person, who had for some time lodged in the same house with him at London, and he gave a full account of the manner of copying.—At a subsequent diet of examination, he again inspected the letters, and said, he thought two of them were originals, and other two copies, wrote with a cleaner or smaller stroke than La Marre's writing; and he even appealed to a gentleman present, whether he was not of the same opinion, that the hand-writing of two of them, was different from that of the other two.

From the whole of his behaviour it seemed plain, that he had no intention to disguise the truth, and it was very apparent, that he had an idea in his head, of La Marre's hand-writing, though, from want of recollection, and perhaps dimness of sight, he could not say precisely how the fact stood. That he did seriously believe Clinton to have been the person who copied some of these letters for him, appears not only from his appeal already mentioned, but from letters afterwards wrote by Sir John on this subject. The pursuers have put into their proof, a letter from him to Mr. Clinton, dated 18th October 1763, after he had heard that Clinton did not recollect his having copied the letters. In this letter he expresses his surprise, that Clinton should have forgot the circumstance of copying these letters, and he ends L. with saying: "I have a particular reason for wishing you may re-
" collect your having copied these French letters for me, and the
" number, if you can, though that is more than I can do, though you
" did copy severals is certain." And it further appears, that Sir
6 U John

Purf. pr. 80,

—31, G.

Purf. pr. 570,
E.

John wrote to another gentleman in London, desiring him to enquire at Clinton about this matter. The pursuers take hold of this anxiety on the part of Sir John, to put Mr. Clinton in mind of having copied the letters. But, with submission, the fair inference to be drawn from it is, that Sir John was convinced in his own mind, that such was the fact.

Had any forgery been intended, it is plain, that one letter would have been sufficient, and four of them quite unnecessary.—This circumstance of itself is a sufficient proof, that there must have been a foundation for the letters.—And it is of little consequence, that none of the original letters now appear.—Many of the most material papers produced in this cause, were recovered by the merest accident.—Almost the whole of the letters received by them when abroad are now lost, and probably were never brought home.—Neither are the whole of those extant, which they received in this country; and such as do appear, have been most accidentally preserved.—Lady Stewart, Sir John's widow, says, that some of the Chevalier Douglas's letters, and
—*414, *G. Mr. Keith's certificate of the marriage, “ were first shown to the deponent, in November 1763, at Sir John Stewart's house of Murthly, “ by one Alexander Stewart, Sir John's own servant, when he was “ about to leave his service, and was delivering up his charge, which “ letters and others were lying in an old trunk, under that servant's “ charge, and wherein he was in use to keep shoe-brushes, deers “ grease, &c. and the deponent, after reading the letters, &c. took “ them into her own custody.” And depones as to certain other writings* produced by her, “ That she found them in a letter-case or writing-box, which was lying below an old cabinet in the house of “ Murthly, in a room where the said servant used to keep his “ master's things, and that this was found in the spring following.”

—367, E. Beadle, the landlord at Southwark, depones, “ That about two years “ after Sir John left his lodgings, this deponent wrote him a letter, “ signifying, that the cloaths and other things were spoiling, and desiring to know, whether he might dispose of them; to which Sir “ John wrote him a letter in answer, authorising this deponent to sell “ them, and accordingly he did sell them for three pounds and upwards. Depones, that upon this sale he separated the papers from “ the other things, and put them in a bag, where they remained till “ a long time after Lady Jane's death, when a lusty gentleman came “ to this deponent, with a letter from Sir John, desiring to give him “ access to the papers, which this deponent accordingly did, by giving him the bag with the papers in it. Depones, that the gentleman

* Letters from Count Douglas, &c.

“ man continued in the room a considerable time, looking over the
 “ papers, and took away with him such as he chose. And the depo-
 “ nent being asked, where the said letter is? depones, that he will
 “ make diligent search for the same, and if he finds it, will give it to
 “ the commissioner. Depones, that the remainder of the said papers,
 “ remained with him till about two years ago, when he delivered them
 “ to Mr. William Gordon of the Middle Temple.” The same witness
 being interrogated for the defender, depones, “ That the papers left — 368, B.
 “ with the deponent, as before mentioned, were intermixed with the
 “ cloaths and other things in the portmanteau, and cloakbag, and
 “ were in great confusion.” Many of Lady Jane’s papers too have been
 found in the hands of different people, among whom they were scat-
 tered and dispersed.—Some were found in the hands of Lady Schaw’s
 heirs, others in the hands of Mr. Lindsay, &c.

Such are the supposed circumstances of conduct, from which sus-CONCLU-
 picion is inferred. None of them are proved, and none of them, if^{SION.}
proved, would be exclusive of the truth of the birth. The memoria-
 list has had occasion already to observe, that every argument taken
 from conduct, must be extremely imperfect, unless the parties them-
 selves were alive, and a full investigation could be obtained into
 every circumstance and motive of action. The apprehensions of
 men are so various, that what appears reasonable to one man,
 seems highly absurd to another, and many things occur every day,
 without the least criminal intention, which, when viewed in a partial
 light, and at a distance of time, will appear suspicious and doubtful.
 If your Lordships however think, that an enquiry into conduct in this
 case, can be of use in forming your judgment, he hopes, you will at
 least take the whole of it together, and that you will not confine the
 examination to one or two particular instances, which may seem
 to favour the notion of an imposture, more than of a true birth. You
 will take a view also of those circumstances, which are *consistent* with
 a true birth, and are indeed only accountable on that supposition.—
 If presumptions and probabilities are to be the rule of judging, let us
 consider, whether the one system or the other, is the most rational and
 most probable.

On the one hand, your Lordships have Lady Jane Douglas and Sir
 John Stewart going to a foreign country immediately upon their mar-
 riage; you have them concealing their marriage; Lady Jane hiding
 her appearances of pregnancy; setting out on a long journey, in the
 7th month of her pregnancy; dropping servants, first, at one place,
 and then, at another; leaving Reims, where she might have had good
 assistance;

assistance; delivered at Paris by an unlicensed accoucheur; living in an obscure house, and in a private manner; letters appearing to be dated from Reims, when they were at Paris; taking no regular proofs after they came home, though suspicions were raised; and, lastly, certain letters found in the trunk of Lady Jane Douglas, which are supposed not to be genuine.

At the same time, you have probable reasons assigned, even at this distance of time, and after the death of parties, for all or most of those seemingly suspicious circumstances. And, on the other hand, in opposition to them, what an infinite multiplicity of unaccountable things do we find in the conduct of Sir John Stewart and Lady Jane, if they were guilty of an imposture? Lady Jane Douglas, a woman virtuously bred, and possessed of high notions of honour, and of the dignity of her family, contrives, without any prospect of advantage, without any enmity at her next heirs, and without any reasonable cause or consideration, to introduce supposititious children into that family. She begins to perpetrate this crime, within eighteen months of her marriage, when there was a possibility that she might have issue of her own body. She does it in a place frequented at that time by company from all nations of Europe. She conceals her marriage, when the very fraud she was carrying on ought to have made her discover it. She imposes upon her own domesticks, and upon her female acquaintance, who had the nearest access to see her; in so much, that even the after surmises and suspicions made no impression upon them. Persons not in the secret are invited to accompany her in her journey to Reims, and to come and live with her in that place. She thinks of lying-in at different places, where it was merely impossible for her to have picked up children. She travels in publick stage-coaches. She at last gets, by mere accident, to Paris, where indeed it was more easy to obtain children by purchase than in any other place, but where the detection of the crime would have been attended with capital punishment.

They proceed in the accomplishment of the fraud, though, by letters previously received from Scotland, they were given to understand, that Lady Jane's pregnancy had no effect upon the Duke. They live in a publick inn, to which they had been recommended by the first magistrate of Reims, and where they could easily be traced. Sir John, while at Paris, goes out to the streets, and, without any assistance or accomplice, picks up a child, whom he carries off, and passes for the issue of Lady Jane; but not content with one child, gives out that she had been delivered of twins, and that the youngest is at nurse in the neighbourhood of Paris.

They

They remain in this city and the neighbourhood for weeks together, living at their ease, and Sir John every day in coffeehouses. They pass some time in a village near Paris, under pretence of recovering Lady Jane's health; and their conscience does not prevent them from returning to that very place, where Lady Jane had formerly shown herself under an equivocal appearance; and from flying in the face of God himself, by a publick and solemn baptism of the child.

They talk frequently, when at Reims, of their second son: they pretend to receive accounts of his health; they give descriptions of him; they make cloaths for him; Sir John goes openly to visit him; other persons are told where he is, and desired to go and see him: yet this youngest child has no existence. Pressing letters are wrote by Sir John to his son, in this country, both before and after the birth, inviting him to come over. In one of these letters, Sir John desires to make him acquainted with his *brothers*, when he has only one brother.

Lady Jane's pension from the Duke, the only fund of subsistence for herself, her husband, and her family, is withdrawn in July 1749; and they are reduced to the necessity of burning the lace of their cloaths to furnish meat and drink to themselves at Reims: yet they set out in November that year, under the pretence of bringing their youngest child from nurse (whom they might have supposed to be dead;) but in reality to run a second risk of detection, and to bring an additional load of trouble, of expence, and of guilt, upon themselves, by purloining another child: and, what must appear altogether miraculous, Sir John once more takes a walk through the streets of Paris, and, without any previous accomplice in that city, by the mere dint of his own genius, tho' an utter stranger to the people, and to their manners, he picks up another child, corresponding in every article to the description he had given of Sholto; of a delicate complexion; to appearance younger and more feeble than his brother, though in reality four months older; and withall the very picture of Lady Jane Douglas.

A *weak* child being thus procured to support a *strong* one, they continue their residence, for some days, in a publick hotel in Paris; from thence they proceed to Rheims, and then to Britain, where they live and die, treating the children as theirs, and asserting them to be such upon every occasion.

The pursuers have accused Lady Jane of dissimulation; but they ought also to have taken in Sir John and Mrs. Hewit, and they ought to have satisfied your Lordships that these three persons were, from the moment of Lady Jane's first appearance of pregnancy, and during their whole after lives, engaged in such a succession of artifice as is not to be paralleled. Lady Jane, while supposed to be pregnant, must have

have wore her mask not only in publick, but in her most retired situations, and even in the night-time. {She must have made entries in her private memorandum-book, with a view to the production of that book in after times. The finesse of revealing the fraud to one of the maids, and imposing on the other (if such was the fact) though both of these maids had equal access to her person, required unusual dexterity; and the leaving one of them at Reims to be a guard upon the other, was a very singular precaution.—Mrs. Hewit's letter to the servant-maids conjunctly, the one knowing, the other ignorant, of the fraud, was a masterpiece of cunning.—The story of the flat-nosed beggar at Liege shows Sir John's talent for dissimulation, and affords also a tolerable specimen of Lady Jane's, who, in place of affecting disgust and horror at the sight of so disagreeable an object, was angry at Sir John for turning him away.

The very idea of a double and successive *suppositio partus* was uncommon, and required a degree of fortitude seldom to be met with. Lady Jane's announcing the pregnancy to her brother, the natural consequences of which might have been to order her home, was a bold step, and unnecessary for the execution of her plan. The invitation of Lord Blantyre, Lady Wigton, and others of her friends, to the christening; giving these people, and others, an opportunity of knowing whether Sholto was real or imaginary; the giving out that Sholto was *endowed* by the man-midwife, a ceremony never practised in this country. These things are so extraordinary, that to account for them must be difficult.—If the birth was fictitious, what occasion had they to load the story with so many circumstances? and how can it be figured, that such a concatenation of fraud should have existed without the clearest detection?

Every particular in the conduct of Lady Jane, of which any kind of satisfying evidence has been obtained, appears inconsistent with the consciousness of a fraud; and none is more remarkable, than the uniform treatment of, and affection to, these children, discovered not only in the eye of the world, but in their most private intercourse, and in letters never intended to see the light.—That they should have been guilty of such repeated falsehood and unwearied hypocrisy to their dying moments, from no consideration of advantage to themselves, but merely to palm a deceit upon their friends, and to impose on the world, is incredible.—The person thus adopted by them might have turned out unworthy of the rank in which they had placed him, and have proved a disgrace rather than an honour to their memories.—In this respect they have been singularly fortunate, if an imposture was committed; but indeed to every person who has had opportunity of knowing him, the very idea of an imposture is inconceivable.—Nature itself has furnished

nished him with proofs that he is not the son of ignoble parents, but the real descendent of that respectable race whose name he bears, and whose merit he represents.—To deprive such a person of the honourable rank which he sustains, to strip him of name, country, birthright, and fortune, upon a slender, conjectural proof, of feeble circumstances, would be such a degree of cruelty as in no age has been paralleled.

From the decision in the case of Blackader, which the pursuers now found on as their plight-anchor, it would appear that they do not pretend to have any clear evidence of an imposture.—They do not expect that your Lordships should pronounce the defender supposititious, but they desire a decision similar to that above named, finding their proof to be *somewhat more pregnant* than the defender's.—Is this the clear proof once so much boasted of, by which they were to demonstrate the *impossibility* of the birth? Is this all they are now able to make of the *unerring* registers of police, and the *infallible* written evidence?—They admit, that the defender has brought strong evidence of his filiation, and that *their* proofs are liable to doubt, but an excusable partiality to their own side of the question, leads them to think, that these proofs, however fallible, are somewhat stronger than the defender's; and your Lordships, without saying, whether he is or is not the son of Lady Jane Douglas, are to pronounce a decision depriving him of his state and birth-right, upon a doubtful and equivocal proof.—A plea of this kind requires no refutation.—It betrays the conviction which the pursuers now have of the weakness of their cause.

From the very nature of their proof it is impossible they can prevail.—It is a proof *by circumstances*, not exclusive of the possibility of the birth, but tending only to create suspicion, and to throw darkness and obscurity over a fact which, in the nature of things, at any distance of time, does not admit of being clearly ascertained.—A proof by circumstances is of all others the most delicate.—Sometimes it may be of such a nature as to afford conviction, but it may as often be fallacious, and have no other tendency than to mislead and perplex; and, in every case of circumstantial proof, if the smallest link is wanting in the chain, the whole must fall to the ground. In the present case, the proof offered by the pursuers is singular in two respects. In the first place, it consists of detached and unconnected circumstances, which do by no means form a compleat legal chain of evidence. Secondly, this proof is attempted against a compleat, legal, and direct proof, already standing in favour of the defender, which proof your Lordships are bound to give credit to, because there is no evidence of perjury, or other objection against the witnesses. It would be of no consequence, supposing the pursuers could show that there were defects

fects in this proof.—Such defects are *natural*, in the evidence of a man's birth, at any distance of time, and can never be reared up as contrary proofs. At the same time, a greater concurrence of every kind of evidence in favour of a birth, can hardly, in any case, be figured; and it is morally certain, that either the memorialist is the son of Lady Jane Douglas, or that many persons, of the most established reputation, have been guilty of downright and deliberate perjury.

How then is it possible, that such a proof can be defeated by a collection of detached and fallacious circumstances, tending only to create some degree of perplexity in a fact, which, from mere lapse of time, death of witnesses, and difficulty of investigating past transactions, becomes *naturally* attended with obscurity, though in the present case it has been ascertained beyond what reasonably could have been expected. Many instances have occurred, of criminals being condemned on circumstantial proof; but, in all such cases, the proof has only been on one side, without any thing to counterbalance it on the other. In no case was it ever known, that a proof, by circumstances, was held sufficient, against a direct and positive proof on the other side, unless clear evidence was at the same time brought of the perjury of witnesses.

In the present case, the fallibility of those circumstances *now* depended on by the pursuers, will appear to your Lordships in a strong light, when you consider the many other circumstances once supposed by them to be equally clear, but which are now departed from.

Condescend.

The name of La Marre was once positively maintained to be *Mart*, and this circumstance was said to be founded on *written evidence*, viz. his act of baptism. But the pursuers now admit, that they were in a mistake in this particular.

The great and fundamental argument on which the present action was begun, the supposed entry to, and constant residence in the house of Michelle, from the 8th July downward, was founded both on *writings* and *witnesses*, and was supposed to be *infallible*, yet it is now abandoned and given up.

The disguise of names in the house of Michelle, thought to be proved by Sir John Stewart's hand-writing; a circumstance of most suspicious aspect, and which weighed much with the learned council in France, is in like manner given up.

The *unerring* evidence of an actual residence in Godfroi's, upon the 12th July, arising from *publick records*, is admitted to be inconclusive.

The *double lodging*, and *double name*, at one and the same time, were much taken hold of in the plaintes; but this hypothesis is now given up.

The

The defects in the act of baptism at Reims were mentioned in the plaintes, under the name of a *fraudulent precaution*. It is now in proof, that every other act of baptism at Reims was at that time precisely in the same terms.

Leaving the man-servant at Aix-la-Chapelle, was a circumstance no less suspicious, and no less insisted on in the Monitoire; but it was discovered by mere accident, in the course of the proof, that he was a French deserter, and could not go along with them, though desired. Sundry other articles of proof have been providentially recovered; such as the evidence of Lambinon, at Liege, &c.

It was offered to be proved in the Tournelle, and indeed was proved as much as any other circumstance of the cause, that Sholto was *not rebaptised* in England. This part of the Tournelle proof never was reported to that court; and a copy of it has been exhibited by Mr. Stuart in the present action. The memorialist has taken the liberty of annexing it in the appendix, in order to give your Lordships a specimen of those negative proofs so much delighted in by the pursuers. The landlord and landlady of the house where Lady Wigton lodged, at Hampstead, and the clerk of the parish, swear very pointedly that no such baptism happened, and that it could not have happened without their knowledge: yet the fact is now ascertained by positive evidence, to the conviction of the pursuers, that Sholto was baptised in Lady Wigton's lodging, at Hampstead, in presence of that Lady, Miss Primrose, Mrs. Greig and Mrs. Hewit, besides Lady Jane. Def. pr. 1034, C.

In the plaintes and original memorials, it was very confidently maintained, that the child, when brought to Michelle's was several months old; and there is reason to believe that their witnesses would have sworn this, though absolutely false, had not the ground, afterwards taken with regard to Mignon, rendered it necessary to depart from this circumstance of the age of the child.—Several other instances might be mentioned of the *pliability* of witnesses. It is certain that the Sanny witnesses did once affirm, that their child had a mark of the small-pox on his face, and a habitual infirmity about his breast. But, before being examined in the cause, they learned that Sholto had neither a mark nor infirmity; and what they had formerly averred, was then as positively denied. App. No. 8, P. 19.

In their condescendance, they lay it down as an undoubted fact, appearing from the books of police, that Sir John and Lady Jane were at Renaud's hotel on the 19th November 1749: and it is mentioned as a most suspicious circumstance, that they should have removed from that hotel, and taken another lodging, under a disguised name. And here again the double lodging and the double name is introduced. Art. 44.

is now acknowledged, that Colonel Stewart of Ardschiel and his lady were the persons who were at Renaud's hotel.

Art. 60.

They offered also to prove, that the truth of the birth was recently, and much suspected, by British persons residing at the time at Paris and in Reims. The contrary of this assertion is incontestibly proved.

In short, the whole condescendance consists of articles, either not proved, or clearly refuted, or in themselves inconclusive. For example, articles 6th and 41st say, that Sautry, the mantua-maker, took Lady Jane's measure before she went to Paris, and made use of the same measure after she came from Paris. No such thing is said by Madame Sautry herself, upon oath. Article 13th, says, that Madame Audry, the mother of twenty children, sat next to Lady Jane, in the stage-coach, during the whole journey to Paris, and did not perceive her being with child. No such thing is in proof. Article 43d says, that Madame Mailfer, on visiting Lady Jane after the miscarriage, was persuaded, from the observations which she then made, that there were no symptoms about Lady Jane either of pregnancy or miscarriage. No such thing is said by Madame Mailfer upon oath.—Were your Lordships to take a comparative view of the condescendance, and of the facts now insisted in by the pursuers, you would be apt to think, that the cause which they *now have*, and the cause which they *formerly had*, bear no resemblance to each other.

But what reason have your Lordships to believe that the *new cause* is better than the *old one*?—The memorialist begs leave to put a case, which will fully illustrate the danger of relying on any of those proofs attempted by the pursuers.—Let it be supposed that the defender had not got possession of the estate, and that he had been unable to employ agents, or to make any defence whatever against the action.—The pursuers would then have had the proof of their own shaping; and your Lordships may easily believe that they would have given it as favourable an appearance as they could.—In that view, Godfroi and his books would never have been heard of.—Even the enlevements would have been disregarded.—And the system adopted, would in all probability have been—an entry to the house of Michelle *on the 8th July*, ascertained beyond the possibility of doubt, by the *unerring written evidence* of his *livre de logeur*;—the age of the child *three months at least*, when brought to Michelle's two days after their entry, proved by a multiplicity of witnesses;—the fictitious name of *Fleurant* reported by gentlemen of honour to be of Sir John's hand-writing, and the family assuming that name traced from Michelle's to Dammartin, and from thence to Reims, where they appeared under the names of Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit;

—not

—not the vestige of a pregnancy at Reims, antecedent to the birth; Sauré, the mantua-maker, measuring the back of Lady Jane, and observing no such appearance; every circumstance of conduct mysterious and obscure; Sholto never re-baptised in England; La Marre's name proved to be Mart, by his act of baptism; a *physical impossibility* of Lady Jane's having been delivered on the 10th July at Paris, by the assistance of a La Marre, or in the house of a La Brun, proved by infallible registers, and circumstances not capable of contradiction. Thus, you would have had a system of proof [*une corps des preuves*] such as was laid before the French council, who advised the Tournelle action, and such as might possibly have staggered your Lordships, notwithstanding the proof in the service; yet certain it is, that, had you pronounced judgment reducing the defender's service, upon the supposed plan of evidence, you would have deprived him of his birth-right and state, upon a proof *false in every article*. So the memorialist is intitled to call it, because it stands contradicted in every article, by the proof now brought, and is in every material circumstance, abandoned and given up by the pursuers.

What dependence, therefore, can your Lordships have on the new system of proof, which is, in all respects, weaker, and infinitely more fallible than the other? unthinking persons without doors may form rash opinions and conjectures, but the memorialist relies on the well known justice of this honourable court, that no regard will be paid to such evidence. Indeed it must have struck your Lordships, as a most extraordinary circumstance in this new cause, that the proof was unintelligible to the very council who pleaded it; some of whom fairly confessed in court, that they differed in their opinions concerning material branches of it.

It was argued for the pursuers, that though their proofs might not seem conclusive, yet, considering the distance of time, and secrecy required in conducting such a fraud, they had recovered all the evidence which could reasonably have been expected, and that it was difficult to figure such a concurrence of circumstances against a true birth.

This argument admits of being retorted.—No case ever occurred, in which such unwearied pains, and amazing expence, attended with every device which could be thought of, for the accumulation of evidence, were bestowed; yet this evidence has proved inconclusive, and the defender has established his birth, by proofs much stronger than could possibly have been imagined in support of a falsehood.—Productions of letters, private memorandum-books, and every kind of investigation

investigation, in place of bringing aid to the pursuers, have turned to their prejudice. The proofs attempted by them in France are to be examined with a jealous eye. The action was raised by persons having no interest, was founded on principles not avowable, and the methods which have been taken of carrying it on, are far from being justifiable. The undue impressions which witnesses received from the plaintes, from the *Monitoire*, from memorials and private conversations, will account for the inclination which some of them seem to have had, of giving a dress and appearance to facts, different from the truth. It was not to be expected, that so much time and labour were to be spent, without raising some ground for suspicion; but, after all, your Lordships have nothing but vague circumstances, and erroneous suppositions, set up against positive proof. These you will have no regard to, the question is, whether have the pursuers proved, by *incontestible evidence*, that the defender is not the son of Lady Jane Douglas?

They are entirely in a mistake when they say, that the proofs brought by them are the strongest which the nature of the thing admitted of, had the imposture been real. It has already been shown, in the beginning of this memorial, that there is hardly a crime under the sun so capable of clear and direct proof as that of *partus suppositio*, and that, in fact, in every case of the kind which has been tried, the conviction has been undoubted. A simulated pregnancy for nine months, and two different acts of purchasing children, at the distance of sixteen months from each other, though these children were given out to be twins, were facts capable of demonstration, had they in nature existed, and a direct and positive proof of them ought certainly to have appeared.

Supposing, however, a proof by *circumstances* to be admissible, those which now appear against the memorialist are so far from amounting to a sufficient evidence, that hundreds of others could be figured, infinitely stronger, and *even these not conclusive*, against him. Let it be supposed, for example, that Godfroi's letter, in answer to Mr. Mailfer, had appeared of a date posterior to the 10th July, mentioning Sir John and Lady Jane to be still in his house; this would have been a remarkable circumstance, and yet a mistake in the date of a letter might easily have happened.

Let it be supposed that the book of the Croix de Fer had been produced, with an article in it concerning Duverné, of a hand-writing similar to Sir John Stewart's, this would have been a stronger circumstance than any in the proof, and yet it might have been liable to fallacy. Many other instances of the same kind might be given,

But,

But, not to detain the court any longer, the cause of Douglas comes to this short issue :—The defender has *possession* of his state, attended with every *presumption* of law, of expediency, and of reason, in his favour ; he has also proved his birth by *direct* and *collateral evidence*, which either must be true, or much perjury has been committed.—On the other hand, the pursuers have, in the course of four years, at a great expence, and by using means unprecedented in this country, been able to make a huge and motely collection of irrelevant proofs, and negative, conjectural circumstances, containing not one fact or inference exclusive of the truth of the birth, but calculated only to *apologize*, in some degree, for that temerity which gave birth to the action.—The question is, whether your Lordships are, upon these proofs, to maintain the heir of a noble family in possession, or to pronounce a judgment divesting him of his state, of his fortune, of his name, fixing eternal reproach on the memory of his parents, and stigmatizing a number of persons still alive, and of good character, as guilty of infamous and deliberate perjury ?

In respect whereof, &c.

ILAY CAMPBELL.



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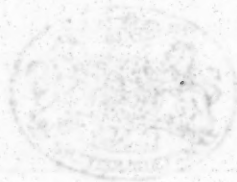
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A P P E N D I X.

N U M B E R I.

C H E F S D E M O N I T O I R E, que
baille devant vous, Messieurs le Capitouls,

Le Procureur du Roi de la Ville.

1°. **C**ONTRE tous ceux qui sçauront, par oïi-dire ou autrement, que le Sieur Marc-Antoine Calas, Aîné, avoit renoncé à la Religion prétendue réformée, dans laquelle il avoit reçu l'éducation; qu'il assistoit aux Cérémonies de l'Eglise Catholique, Apostolique, et Romaine; qu'il se présentoit au Sacrement de pénitence, et qu'il devoit faire abjuration publique après le treize du présent mois d'Octobre; et contre tous ceux auxquels Marc-Antoine Calas avoit découvert sa Résolution.

2°. Contre ceux qui sçauront, par oïi-dire ou autrement, qu'à cause de ce changement de croyance, le Sieur Marc-Antoine Calas étoit menacé, maltraité, et regardé de mauvais œil dans sa Maison; que la Personne, qui le menaçoit, lui a dit, que s'il faisoit abjuration publique, il n'auroit d'autre Bourreau que lui.

3°. Contre ceux qui sçavent, par oïi-dire ou autrement, qu'une Femme qui passe pour attachée à l'Hérésie incitoit son Mari à des pareilles menaces, et menaçoit elle-même Marc-Antoine Calas.

4°. Contre tous ceux qui sçavent, par oïi-dire ou autrement, que le treize du mois courant au matin, il se tint une Délibération dans une Maison de la Paroisse de la Daurade, où la mort de Marc-Antoine Calas fut résolue ou conseillée, et qui auront, le même matin, vu entrer ou sortir de ladite Maison un certain nombre desdites Personnes.

5°. Contre tous ceux qui sçavent, par oïi-dire ou autrement, que le même jour treize du mois d'Octobre, depuis l'entrée de la nuit jusques vers les dix heures, cette exécration fut exécutée, en faisant mettre Marc-Antoine Calas à genoux, qui, par surprise ou de
A force

force, fut étranglé ou pendu avec une corde à deux nœuds coulans ou baguelles, l'un pour étrangler, et l'autre pour être arrêté au billot, servant à ferrer les balles, au moyen desquels Marc-Antoine Calas fut étranglé, et mis à mort par suspension, ou par torsion.

6°. Contre tous ceux qui ont entendu une voix criant à l'Assassin, et de suite, Ha! mon Dieu, que vous ai-je fait? Faites-moi grace, la même voix étant devenue plaignante, et disant, Ha! mon Dieu, ha! mon Dieu.

7°. Contre tous ceux auxquels Marc-Antoine Calas auroit communiquées les inquiétudes qu'il effuyoit dans sa Maison, ce qui le rendoit triste et mélancholique.

8°. Contre tous ceux qui sçavent, qu'il arriva de Bordeaux, la veille du treize, un jeune Homme de cette Ville, qui, n'ayant pas trouvé des Cheveux pour aller joindre ses Parens qui étoient à leur Campagne ayant été arrêté à souper dans une Maison, fut présent, consent, ou participant à l'Action.

9°. Contre tous ceux qui sçavent, par ouï-dire ou autrement, qui font les Auteurs, Complices, Fauteurs, Adhérans de ce Crime, qui est des plus détestables.

Enfin contre tous Sçachans et non Revelans les faits ci-dessus, circonstances et dépendances.

Au Parquet ce 17. Octobre 1761. P I M B E R T, Avocat du Roi.

A VOUS MESSIEURS LES CAPITOU LS.

S U P P L I E le Procureur du Roi, et dit, qu'ayant porté Plainte et fait informer au sujet de la mort violente de Marc-Antoine Calas, les cas qui peuvent en resulter sont des plus graves, et exigent les recherches les plus exactes et les plus scrupuleuses; c'est pourquoi requiert, qu'il vous plaise, MESSIEURS, nous permettre de faire publier et afficher les Chefs des Monitoires ci-attachés aux formes de Droit, pour les Révelations rapportées être ordonné ce qu'il appartiendra. Au Parquet ce 17. Octobre 1761. P I M B E R T, Avocat du Roi.

N O U S Capitouls-Gouverneurs de la Ville de Toulouse, Chefs des Nobles, Juges és Causes Civiles, Criminelles, de la Voyrie et de la Police en la ditte Ville et Gardiage d'icelle; Vû la présente Requête et Chefs de Monitoire y attachés, attendu qu'ils sont conçus en termes généraux, permettons aux Gens du Roi d'obtenir, et de faire publier et afficher lesdits Chefs de Monitoire, aux formes de Droit, pour les Révelations rapportées être ordonne ce qu'il appartiendra. Délibéré au
Conseil

[3]

Consistoire le 17. Octobre 1761. DAVID DE BEAUDRIGUE,
Capitoul. CHIRAT, Capitoul. LISLE-BRIBES, Capitoul.
BOYER, Capitoul. MONYER, *Assesseur*.

A VOUS MONSEIGNEUR L'ARCHEVÊQUE
de Toulouse.

SUPPLIE le Procureur du Roi, et dit, qu'il a obtenu Permis-
sion d'obtenir et faire publier Monitoires, sur des Cas très graves,
intéressans pour la Religion; c'est pourquoi requiert qu'il vous plaise,
MONSEIGNEUR, ordonner que lesdits Monitoires seront publiés en la
forme ordinaire, pendant trois Dimanches consecutifs. Au Parquet ce
dix-septième Octobre mil sept cens soixante-un.

PIMBERT, Avocat du Roi.

EXPEDIANTUR et publicentur Litteræ Monitoriales in for-
ma consueta. Datum Tolosæ die 17, Octobris anno 1761.
L'ABBÉ DE CAMBON, Vic. Gen.

N U M B E R II.

QUOTATION from Cochin, referred to
in page 51st of the Memorial.

C'EST sur ces deux genres de preuves qui porte l'état des hommes; Vol. 4,
celle de la possession publique est la plus ancienne, et la moins sujet P. 344.
à l'erreur, celle des registres publics est la plus nouvelle et la plus au-
thentique. Quand elles se prêtent un secours mutuel tous les doutes
disparoissent; quand elles ne sont pas unies les questions peuvent dé-
pendre de la vérité des espèces, et des circonstances.

Ou l'on est attaqué dans un état dont on est en possession, ou l'on
réclame un état dont on n'a jamais joui. Dans le premier cas la pos-
session suffit à celui qui est attaqué, il n'a pas besoin de recourir aux
monuments publics, ni à aucune autre genre de preuves; il possède,
et à ce seul titre on ne peut pas hésiter à le maintenir.

Dans le second cas, celui qui réclame un état, dont il n'a jamais
joui, trouvant le même obstacle de la possession, ne peut réussir dans
son

son entreprise, s'il n'a en sa faveur des titres solennels, qui prouvent que la passion et l'injustice l'ont dépouillé.

Possession d'état preuve toujours décisive.

Ainsi la possession publique, qui décidait seul avant l'établissement des registres publics, conserve toujours son premier empire ; c'est elle qui forme toujours la preuve la plus éclatante, et la plus décisive, et si elle peut être combattue par des preuves contraires, ce n'est qu'autant que ces preuves posent d'abord sur un fondement solide adopté par la loi, c'est à dire sur les titres les plus authentiques, et les plus respectables.

De ces vérités que la raison dicte seule, et qu'elle grave, pour ainsi dire, dans le cœur de tous les hommes, naît une conséquence qu'il faut toujours avoir présente à l'esprit.

Possession et registres réunis ne souffrent aucune question d'état.

C'est qu'il ne peut jamais se former une question sérieuse sur l'état d'un citoyen, quand les titres et la possession sont d'accord à son égard, soit que ces preuves réunissent pour confirmer l'état qu'on lui conteste, soit qu'elles se réunissent pour l'exclure de l'état au quel il aspire.

Cette vérité se manifeste également dans deux hypothèses que l'on peut former.

Première hypothèse. Un homme par son acte de baptême est déclaré fils légitime d'un tel, et d'une telle sa femme, il a toujours, été élevé et connu comme leur fils légitime, si quelqu'un entreprenoit de contester son état, feroit-il écouté ?—il auroit à combattre, en même tems, et la preuve résultant des registres publics, et celle qu'administre la possession. En vain articuleroit-il alors des faits, et demanderoit-il permission d'en faire preuve, il feroit nécessairement accablé par le poids de ces deux preuves réunies.

Seconde hypothèse.—Un citoyen veut se donner entrée dans une famille, il n'a pour y parvenir, ni le secours des monuments publics, ni l'avantage de la possession ; arrêté par ces obstacles invincibles, qu'il articule des faits, qu'il demande permission d'en faire preuve, cette voie inconnue à la loi, funeste à la société sera nécessairement rejetée dans tous les tribunaux.—La raison en est sensible, c'est que les deux genres des preuves, destinés à fixer l'état des hommes, se réunissent, ou pour confirmer l'état de celui qui est troublé, ou pour exclure l'état de celui qui réclame, tout autre genre de preuve est nécessairement impuissant.—La loi naturelle a établi la preuve qui naît de la possession publique ; la loi civile et politique a établi la preuve qui naît des registres ; l'autorité qui forme le concours de ces preuves est inébranlable, la preuve testimoniale n'est pas d'un poids et d'un caractère qui puisse leur être opposé.

Vingt témoins qui diroient, Vous avez été baptisé comme fille d'un tel et d'une telle, vous avez toujours vecû, vous avez toujours contracté
comme

comme fille des mêmes pere et mere, et néanmoins vous n'êtes pas leur fille, c'est une autre mere qui vous a donné le jour ; ainsi il faut vous chasser du rang que vous occupez dès les premiers moments de votre naissance ; ces temoins ne feroient aucune impression en justice, leur suffrage seroit méprisé, et ne pourroit passer que pour une imposture odieuse ; autrement il n'y auroit personne qui peut être assuré un seul instant de son état, n'ayant pour garant de son sort que les registres publics, et la possession.—De même, vingt témoins qui diroient, Les registres publics n'annoncent point que vous foyez née d'un tel, ou d'une telle sa femme, jamais vous n'avez été élevé ni connuë pour leur fille, jamais vous n'en avez porté le nom, jamais vous n'en avez occupé le rang ; n'importe, nous certifions, et nous déposons que vous êtes le fruit de leur mariage, et il faut vous introduire dans leur maison ; ces temoins, dans ce cas, non seulement ne peuvent mériter la confiance de la justice, mais elle ne peut les entendre qu'avec indignation, parceque leur suffrage se trouve combattuë par le concours des preuves qu'administre la loi naturelle et politique, dont le poids les accable.

Disons donc, que quand on a en sa faveur l'autorité des titres publics et de la possession, on jouit d'un état inébranlable, et que, par la même raison, quand on n'a en sa faveur ni l'une ni l'autre de ces preuves, les tentatives que l'on fait pour s'arroger un état, dont on n'a jamais joui, ne peuvent tourner qu'à la confusion de ceux qui s'engagent dans des démarches si téméraires.

In another place the same Author says,—Elle est infiniment dangereuse si on l'admet en faveur de ceux qui n'ont ni titres ni possession.—L'état des hommes, ce bien précieux, qui fait, pour ainsi dire, une portion de nous mêmes, et auquel nous sommes attaché par des liens si sacrés, n'aura plus rien de certain ; on le verra tous les jours exposé aux plus étranges révolutions.—L'homme qui jouit d'un nom illustre et d'un rang distingué sera renversé et précipité, pour ainsi dire, dans le néant, parcequ'on entreprendra de lui prouver par temoins, qu'il n'est point ni des pere et mere, qui lui ont été donnés dans son acte de baptême, et qui l'ont élevé publiquement comme leur enfant—on supposera des faits, auxquels on donnera une exterieure de vraisemblance.—une grande maison, dira-t-on, étoit prête à s'éteindre, on a eu recours à la fiction pour la perpétuer, on a pris un enfant étranger, et on lui a procuré les titres, et la possession propre à l'introduire dans le sein de cette famille ; mais il faut que la vérité triomphe, et la preuve testimoniale seul peut la développer—C'est ainsi que dans l'état le plus tranquille on verra son nom, sa fortune, son rang, compromis, et livrés aux dangers d'une preuve plus souvent dévouée à la corruption, et au mensonge qu'à la vérité.—D'un autre côté, un enfant de ténèbres qui ne trouve dons son sort que dégoût et que misères, entreprendra tout

Etat est un bien précieux, p. 352.

pour en sortir ; plus sa destinée sera obscure et inconnue au public, et plus il lui sera facile de se donner un nom et un rang distingué, s'il lui est permis d'y aspirer avec le secours de quelque témoins disposés à soutenir son imposture—ainsi la société civile ne sera plus qu'un chaos dans lequel on ne pourra plus se distinguer et se reconnoître à des caractères certains, on changera d'état comme de mode, et les conditions, distribués par la providence, au milieu des tempêtes dont elles seront agitées, éprouveront des vicissitudes qui feroient l'opprobre de la nature.

Qu'on ne dise pas, que ces sont là des inconveniens et des vaines terreurs qui ne doivent pas prévaloir sur la vérité ; sans doute, que si la vérité pouvoit briller à nos yeux avec cet éclat dont l'évidence est accompagnée, il faudroit l'embrasser avec joie, et la soutenir avec courage.—Mais il ne faut pas se flatter de la trouver jamais dans les questions d'état, à ce degré d'évidence, et, pour ainsi dire, d'infailibilité, qui pourroit remplir tous nos vœux.—La conception, la naissance, peuvent être enveloppées de mille nuages, les passions peuvent y jouer leur rôle et substituer des couleurs à la réalité, l'illusion peut y trouver sa place ; mais si c'est un malheur attaché à la condition humaine, il faut, dans l'incertitude nécessaire où elle est plongé, se fixer à des règles certaines qui conduissent le plus ordinairement à la vérité, qui du moins entretiennent l'ordre et la paix, avantage plus précieux pour la société en general, que la recherche d'une vérité obscure ne peut l'être pour l'intérêt de quelques particuliers.—Or, les règles qui peuvent seules nous servir de boussole dans cette mer orageuse c'est la possession publique, principalement quand elle est fortifiée par l'autorité des régitres et des monuments les plus authentiques : abandonner la route qu'elle nous trace, pour s'engager dans celle de la preuve testimoniale, c'est se livrer à des écueils, dans lesquelles la vérité court un risque évident de faire naufrage.—Il est donc de la sagesse des magistrats, il est de l'intérêt essentiel de la société de s'en tenir à ces preuves juridiques, connues, respectées dans tous les tems, adoptées par la loi, et qui sont le gage de la tranquillité publique : à l'abri de leur autorité, chaque citoyen, renfermé dans la condition que la providence lui a distribué, ne cherche qu'à en remplir les devoirs ; l'ambition et l'avidité, tenues en quelque manière captives, ne ravagent point la société, les hommes ne se déchirent point, ne se deshonnorent point les uns les autres, pour s'enlever les biens et les honneurs, qui sont le partage de chaque état ; on n'est occupé qu'à s'élever ou à se maintenir par les talens, par la vertu, par les services que l'on peut rendre à sa patrie, et l'ordre public, du moins, conserve tout son éclat.—Sacrifiera-t-on de si grands avantages à la cupidité de quelques particuliers, qui, pour sortir de leur obscurité, imaginent des faits, les arrangent avec art, et n'ont pour tout ressource
que

que les incertitudes de la preuve testimoniale.—C'est faire injure à la sagesse qui préside aux jugemens de la cour, que de lui proposer des principes si funestes.

N U M B E R III.

ARTICULATION des faits pour Monsieur de Rougemont.

1^{re}. **Q**UE, depuis la demande, en séparation de corps, formée par la Dame Hatte en 1718, le Sieur Hatte avoit fréquenté la Dame Hatte son épouse, nottamment dans les mois de Septembre, Octobre, Novembre, et Decembre, 1719.

Que quoique, depuis ce tems, il ayent toujours vecûs séparément, cependant, de tems à autre, le Sieur Hatte paroissoit reprendre des sentimens de tendresse pour la Dame son épouse ; et qu'enfin, dans le cours de cette séparation, il a été surpris par un des ses parens les plus respectable chez la Dame Hatte, dans un état que annonçoit la familiarité de ses visites.

2^{de}. Que dans le mois Novembre 1719, époque réelle de ces réconciliations, la Dame Hatte devint grosse, que sa grossesse fut connue de toute la famille, et de son mari, et que le 17 Aoust 1720, elle fut accouchée, au lieu de la Chapelle, tenant au Fauxbourg St. Denis, par une garde nommée Dubut, en l'absence de Sieur Perrard, accoucheur, qui avoit été mandé, et qui n'arriva qu'au moment où la Dame Hatte venoit d'accoucher.

3^{me}. Que le suppliant, dont elle accoucha, étoit dès lors marqué au côté droit du nez d'une tache bleuâtre, qu'il porte encore aujourd'hui.

4^{me}. Qu'il fut remis par la Dame Dubut à Nicolle de la Grosse, femme du Sieur Claude Cheronnet, du lieu de Fripillon, qui avoit été retenuë pour nourrice.

5^{me}. Qu'aussitôt que la Dame Hatte fut relevée de couche elle alla à Fripillon, chez Nicolle de la Grosse, avec le Sieur Corrigé, chirurgien, demeurant butte St. Roche, pour y voir le suppliant.

6^{me}. Qu'au bout de quatre mois le dit Sieur Corrigé, à la prière de la Dame Hatte, alla retirer le suppliant des mains de cette première nourrice, et qu'il le confia à une seconde nourrice, nommée Hutton, femme d'un sculpteur, demeurante rue de Moineaux, voisinage du
Sieur

Sieur Corrigé, chez laquelle il est resté quatre ans, sous le nom de Poupon.

7^{me}. Que, durant tout ce tems-là, la nourrice menoit chaque jour le suppliant chez le Sieur et Dame Corrigé, qui payoient exactement toute la dépense, des deniers de Madame Hatte, et qui la ditte Dame alloit assiduelement dans la maison des Sieur et Dame Corrigé voir le suppliant.

1724.

8^{me}. Qu'en 1724, les Sieur et Dame Corrigé retirèrent le suppliant dans leur maison, à la prière de la Dame Hatte, laquelle alloit frequemment y voir le suppliant; et que le suppliant y est demeuré environ un an.

9^{me}. Que Madame de l'Attaignant est allée dans la ditte maison des Sieur et Dame Corrigé, avec la Dame Hatte sa soeur, voir le suppliant, qu'elle connoissoit pour le fils de la Dame sa soeur.

1725.

10^{me}. Qu'en 1725, le suppliant fut mis en pension, sous le nom de la Rivière, chez le Sieur Lentin, rue de Reuilly, Fauxbourg St. Antoine, où il est resté jusqu'en 1730; et que, pendant tout ce tems, sa pension a été payée par les mains des Sieur et Dame Corrigé, et des deniers de la Dame Hatte.

11^{me}. Que la Dame Hatte alloit l'y voir très frequemment, accompagnée de Madame de l'Attaignant, sa soeur, qui avoit placé Messieurs ses fils dans cette même pension, où étoient aussi les fils du Sieur Miotte de Ravannes, frère de la ditte Dame Hatte.

12^{me}. Que Madame de l'Attaignant, qui connoissoit le suppliant pour être le fils de la Dame sa soeur, lorsqu'elle alloit à la ditte pension, le faisoit appeler avec ses propres enfans, qu'elle le caressoit publiquement, et lui donnoit des bons bons, ainsi que la Dame Hatte; ce qui faisoit dès lors dire hautement, que la Dame Hatte étoit sa mere.

13^{me}. Qu'au sortir de cette pension le suppliant fut mis au College de la Marche, où il porta le même nom de la Rivière, et que ses pensions y furent de même payées par les Sieur et Dame Corrigé, des deniers de la Dame Hatte.

14^{me}. Que, de tems à autres, le dits Sieur et Dame Corrigé envoyoyent chercher le suppliant au College de la Marche, pour venir passer la journée dans leur maison; que toutes les fois que la Dame Hatte devoit s'y trouver on prenoit soin de le mieux ajuster.

15^{me}. Que le suppliant ayant été attaqué au Collège de la Marche d'une fièvre maligne, les Sieur et Dame Corrigé le retirèrent dans leur maison, où la Dame Hatte vint tous les jours le voir, et qu'elle passoit des heures, quelquesfois des journées entières, auprès de son lit.

16^{me}. Que pendant tout le tems que le suppliant a été en nourrice chez le Sieur et Dame Corrigé dans la pension du Sieur Lentin, et au College de la Marche, il étoit annoncé comme fils des Sieur et Dame

Corrigé

Corrigé, quoique dès lors, et dans toutes les dites époques, il fut notoire dans la famille, et pareillement à tous ceux qui avoient avec elle quelque relation, que la Dame Hatte étoit la mere du suppliant.

17me. Qu'en 1738 le suppliant, ayant voulu entrer au service, le Sieur Corrigé lui dit, qu'il n'étoit pas son fils; qu'il ne s'appelloit pas la Rivière; que son nom étoit Rougemont.

18me. Qu'environ dans le même tems le suppliant fut présenté, sous le nom de Rougemont, par la Dame Hatte, au Sieur de la Bourgonnière, Chevalier de St. Louis, major de la citadelle de Marseilles: qu'on lui dit, que cet officier étoit son oncle, quoiqu'il ne le fût pas; que ce fut le Sieur de Bourgonnière, qui se chargea de le faire entrer au service, en l'annonçant comme son neveu.

19me. Que quelque tems après que le suppliant eût été reçu dans le régiment d'Aunis, depuis incorporé dans celui de Languedoc, dont il est aujourd'hui le premier Capitaine factionnaire, ce régiment conçut des doutes sur son état, et fit faire des informations pour sçavoir s'il y avoit véritablement une famille de Rougemont à la quelle le suppliant appartenoit; que ces recherches n'ayant pu produire aucune connoissance le suppliant se vit plusieurs fois inquiété à ce sujet; que le conduit qu'il tint dans ces circonstances, et les marques d'estime, qui lui donnèrent ses superieurs imposèrent silence à tout le monde; mais que le régiment fut persuadé, et l'a toujours été, que le vrai nom du suppliant n'étoit pas Rougemont.

20me. Que depuis l'incorporation de ce régiment dans celui de Languedoc, et en l'année 1754, le régiment étoit en quartier dans le Vivarets, il se tint une assemblée composée de plusieurs Capitaines de la tête du dit régiment, dans laquelle il fut agité, si l'on n'obligeroit pas le suppliant à justifier de son état, et, faute de le faire, à se retirer, mais la bonne opinion que l'on avoit prise du suppliant déterminant le plus grand nombre à le laisser tranquillement dans son état militaire.

21me. Qu'au retour de l'armée le suppliant a occupé un appartement, rue St. André, dans une maison occupée par le Sieur Courtibout, principal locataire; que cet appartement avoit été loué et meublé en son absence de l'ordre de la Dame Hatte, et que les deniers de sa location ont été payés par le Sieur Moncade fils de la Dame Corrigé, des deniers de la Dame Hatte.

22me. Que le suppliant étant tombé malade dans cette maison la Dame Hatte vint l'y voir plusieurs fois, et qu'elle étoit accompagné du Sieur de Moncade.

23me. Que le régiment de Languedoc, ayant été désigné en 1755, pour l'embarquement du Canada, ce fut la Dame Hatte qui fit elle-même

l'achat des équipages, qui pouvoient être nécessaires au suppliant pour un si long voyage.

24me. Qu'en 1756, la Dame Hatte rémit à Monsieur de Guers, ancien major du régiment d'Aunis, une somme de 31,000 livres, pour la remettre au suppliant, ce qu'elle déclara au dit officier, qu'elle tenoit somme du Sieur Hatte son mary

25me. Que la Dame Hatte avoit déclaré, depuis longtems, à cet officier, ainsi qu'à plusieurs autres personnes, que le suppliant étoit son fils, et qu'elle leur a recommandé, jusqu'au dernier tems de la vie du Sieur Hatte, de n'en rien dire au suppliant, dans la crainte qu'il ne prévint, par quelque éclat, l'effet des promesses, qu'elle disoit, que le Sieur Hatte, son mary, luy avoit faites de reconnoître ce fils.

26me. Que ce n'est qu'à la fin de 1757, que la Dame Hatte fit l'aveu au suppliant, qu'elle étoit sa mere.

27me. Qu'aussitôt le suppliant s'est occupé de la recherche des preuves de son état; qu'il obtint à cet effet differens congés; et qu'il fit en 1758, plusieurs consultations pour guider les démarches qu'il devoit faire; mais qu'il luy fut conseillé de chercher de nouveaux éclaircissmens, qu'il n'est parvenu que de long tems à se procurer.

28me. Que le suppliant, n'a cessé d'avoir et d'entretenir des liaisons intimes avec la Dame Hatte; que les domestiques de la dite Dame, persuadés que le suppliant étoit son fils, le servoient avec le même respect, que s'il eut été leur maitre; qu'il mangeoit frequemment chez la Dame Hatte; que même dans les derniers tems, et nottamment depuis sa reclamation, il a plusieurs fois mangé chez la Dame Hatte, avec les plus proches parens, tant du Sieur Hatte, que de la dite Dame; qu'il a été invité à manger chez les dits parens, avec la Dame Hatte, et sans elle.

29me. Que le 6 Octobre, à sept heures du matin, la Dame Hatte, accompagnée du Sieur Cathelin, Curé de la Madelaine, alla dans la maison du Sieur Hatte, qui l'avoit demandée; que la dite dame s'étant approchée du lit de son mary, elle en reçut l'accueil le plus favorable, et qu'il lui tint les discours les plus touchans sur les malheurs, qui avoient troublés leur vie; que la Dame Hatte tomba evanouie, sans pouvoir répondre, et que son faïssissement continuant toujours, on fut obligé de la reconduire chez elle, aussitôt que le Sieur Hatte eût été administré.

30me. Que le même jour le suppliant avoit suivi la Dame Hatte jusqu'aux environs de la maison du Sieur Hatte; et qu'il l'attendoit, dans la rue, que la Dame Hatte le fit avertir pour le présenter à son pere.

31me. Que le lendemain, 7 Octobre, dès le grand matin, la Dame Hatte, suivie pareillement de son fils, se rendit à la maison du Sieur Hatte

Hatte pour l'engager à effectuer les promesses, qu'il lui avoit faites en differens tems, de reconnoître le suppliant ; que la porte ayant été refusée, elle se vit obligée de forcer l'entrée, mais que l'obsession, dans laquelle étoit le Sieur Hatte, fut telle, qu'elle tenta inutilement de le révoir ; et que les portes de la chambre de son mary furent fermées aux verrouils, sans qu'il aït été possible à la Dame Hatte d'obtenir des domestiques de la maison, ny des personnes qui étoient enfermées dans la chambre, nottamment Madame de Viels-maisons, qui les luy ouvrit.

32me. Que dans les trois jours qui ont suivi, jusqu'au décès du Sieur Hatte, la Dame Hatte a continué de se rendre, dès le matin, dans la maison de son mary, d'où elle n'est sortie qu'à la nuit, et quelques-fois aux heures du repas, mais qu'on a également continué de tenir fermées aux verrouils les portes de la chambre de son mary.

33me. Que pendant les dits quatre jours le suppliant n'a cessé d'attendre aux environs de la maison, à fin qu'il pût être présenté par la Dame Hatte à son père.

34me. Que la dite Dame Viels-maisons, informée de ce fait, sortoit de la chambre du malade, et s'écria sur l'escalier en ces termes : *les plus grands ennemis de mon pere sont icy ; M. de Rougemont est à la porte ; on veut le presenter à mon pere pour qu'il le reconnoisse.*

35me. Que Madame de Vauvre ayant prié le Sieur de la Conde, gentilhomme de Normandie, d'observer si le suppliant étoit aux environs de la maison, le Sieur de la Conde apperçut le suppliant, qui attendoit dans un carosse de place, et qu'il rapporta à Madame de Vauvre que le suppliant étoit effectivement dans la rue.

36me. Que Mesdames de Vauvre et de Viels-maisons ont dit plusieurs fois, que le suppliant étoit fils de Madame Hatte.

37me. Que le Sieur Hatte a reconnu luy-même, et déclaré plusieurs fois à des personnes d'une caractère respectable, que la Dame Hatte étoit accouchée d'un fils, qui avoit été baptisé sous des noms inconnûs et que le dit Sieur Hatte a levé à St. Eustache son acte de baptême, qu'il a montré à plusieurs personnes comme étant celui du suppliant.

38me. Enfin, que tous les parens du dit feu Sieur Hatte, sans exception même ceux qui seroient ses hérétiques, en cas de défaillance de sa postérité reconnoissoient le suppliant, et le traitoient journellement comme leur parent.

Ordonner, que les dits Sieur et Dame de Viels-maisons et de Vauvre feront tenûs d'avouer, ou contester, dans le jour, les faits cy-dessus, et en cas d'aveu, ajuger au suppliant les conclusions directes par lui prises. Et, en cas de defaveu, luy permettre de faire preuve des dits faits, tant par titres que par témoins devant tel des M. M. qu'il plaira à la Cour
pour

pour ce commettre, pour l'enquête faite et rapportée, être ordonnée ce que de droit; et en cas de contestation, condamner les contestans aux dépens, tant des causes principales que d'appel et demandés, et vous ferez bien.

Signé DANJOU.

Signifié le 26. Avril, 1765.

N U M B E R IV.

Mr. LEITH's report, 14th July 1766, and memorandum given in to him by Mr. Davidson.

I ROBERT LEITH, depute-clerk of Session, having, in consequence of a remit from the Right Honourable the Lords of Council and Session, of date the 25th of June last, proceeding upon the petition of George-James Duke of Hamilton, and others, pursuers, and answers thereto by Archibald Douglas, Esq; defender, whereby the said Lords, *inter alia*, "appointed Mr. Charles Brown, doer for the defender, to "give inspection to me of the whole letters referred to in the said petition, whereof excerpts or copies were produced, in order that I "might compare the same, and see that the same are fully and fairly "taken, with power to me to take such further excerpts as might seem "to me to relate to this question." Received from the said Charles Brown the whole letters, of which the excerpts do begin, in the defender's printed proof, p. 900, and end upon p. 961, and are intituled, *Exhibits made by him, when examined by the pursuers the 18th October 1765*, except the letter from Charles Farquhar to Lady Jane Douglas, and the letter from Mr. Pelham to her: Excerpts of which two letters are in pages 959 and 961. As also, having received from Mr. John Davidson, doer for the pursuers, a memorandum for me, relating to inspecting the said letters, signed by me on the third page thereof, as relative to this report; and having carefully gone through and compared the said letters, with the excerpts or copies given in, and signed by the said Charles Brown, consisting of 147 pages in writ, also received by me from him, and all contained in the pages of the printed proof, as above, do report, that the excerpts or copies of the said letters, so far as they are taken, and go, are fairly made; only in the

scroll of the letter of Lady Jane's hand-writing, whereof an excerpt is taken, beginning upon page 960, and ending upon page 961 of the said printed proof, the following words, ("not knowing what to do in so unexpected an occurrence,") are not in the scroll; and, further, that there does not seem to me any thing material to the question in issue, to be further excerpted or copied from the said letters. At the same time upon this point, I shall beg leave to add, that I find, in the letter from Lady Jane to Mr. Stewart, of Monday morning, and of which the excerpt is the fourth, upon page 903 of the said printed proof, the following paragraph: "A friend of mine has advised me to get a certificate in all form from Mr. Keith of our marriage, with two creditable witnesses, such as Mr. Keith shall chuse, with an affidavit from a justice of peace; I therefore desire you, dear Mr. Stewart, to send me a sketch of such a letter to Mr. Keith upon this subject, as you think proper for me to write to him, for I am not conversant in such matters, and I want much to have the letter wrote in a right manner; do me this favour at your first conveniency." There is added a postscript in these words: "At meeting, the reason of my being advised to write to Mr. Keith, which makes me press you to form a letter to him." That I also find, in three of Lady Jane's letters to Mr. Stewart, mention made of the children, though not in the said excerpts; to wit, in Lady Jane's letter of Monday, at the foot of 902 page of printed proof, she writes, "In the mean time, adieu. Be you but well and easy in your mind, and all is well; the children are so, blessed be God." In the letter of Monday, beginning at the foot of the 916, and ending at the top of the 917 pages of the said printed proof, "The little men are very well." And in the other letter of Thursday at 11 o'clock, at foot of said 917 page, "The little men are well." And I further report, that Lady Jane Stewart's letter, of date, London, 17th July 1753, and her other letters; as also Mr. Colvil's, Mr. Eccles, Mr. Gufthard, and Mrs. Hewit's letters, all to Mr. Stewart, and excerpted upon pages 950, 951, 952, 953, 954, 955, 956, 957, 958, and 959 of the said printed proof, appear to be addressed on the back, mostly as, "To Mr. Thomson." The address of said letter of Lady Jane's of 7th July, being with her own hand thus, "To John Thomson, Esq; at Barkhamstead, Hartfordshire." Her other letter, dated London, 10th July said year, being addressed, but with another hand, "To Mr. Thomson, to the care of Francis Farquharson, Esq; at Barkhamstead, Hartfordshire," and with the post-office mark upon it. Mr. Colvil's letter, the 16th of August, being addressed thus: "To Mr. Thomson, to the care of Mr. Charles Farquhar, at Mr. Mirehouse's, barber in Star-court, Breadstreet, Cheapside, London," with sixpence postage charged, and post-

mark upon it; and the rest of the letters having an address on the back, "To Mr. Thomson," without any other addition, save two or three of them, addressed "To Mr. Stewart, or Coll. John Stewart," and one without any address. And I do also report, that the said Charles Brown did put in my hands Lady Wigton's letter, 29th July 1748; excerpt of which was produced by him, when examined *in anno* 1764, and is upon 981 and 982 pages of the defender's printed proof; and that the said excerpt or copy, so far as it goes, is fairly taken, with this small variation, that the word (Do,) at the end of the tenth line of the printed excerpt, page 982, should be (did;) and the last word (me) in the postscript, should be (him) it being so as to both words in the principal letter; all which is most humbly submitted. In witness whereof, I have written and subscribed these presents, on this and the two preceeding pages, at Edinburgh, the 14th Day of July 1766 years. (Signed, ROBERT LEITH. N. B. The excerpt of Lady Jane's letter, dated Hope-park, March 22d, 1753, at foot of 945 page of printed proof, bears to be addressed, "To Mr. George Farquhar," as does the written excerpt; but on the letter itself, it is addressed, "To Mr. Charles Farquhar, at Mr. Mirehouse's, barber in Star-court, Bread-street, Cheap-side, London."

(Signed,) ROBERT LEITH.

MEMORANDUM for Mr. LEITH.

That, in examining the letters to be put into his hands by Mr. Brown, he will be pleased to give particular attention to the following articles:

1mo, Whether, in these letters, any other mention is made of the children, than what has been excerpted by Mr. Brown?

2do, Whether any mention is made in Lady Jane's letters, of her having had an interview in Scotland with Mrs. Menzies, or with Lord Prestongrange?

3tio, Any mention of her intention of going to Douglas-castle, or of her reception there, and the causes of it?

4to, Any mention of letters intended to be shown to the Duke, or to any other persons, in relation to the children, or in relation to her pregnancy or delivery, for giving satisfaction on these heads?

5to, Any reference in any of the letters, to what had passed while they were in France, or any reference to Lady Jane's miscarriages?

6to, Any mention of Lady Jane's general reception in Scotland, when she came down in 1752; and whether there is any allusion to the suspicions then entertained about the children?

7mo,

7mo, Any mention of the pocket-book, which Sir John and Lady Jane were in use to keep?

8vo, Any mention of the proofs of the pregnancy, got or expected from Aix-la-Chapelle?

9no, Any mention of Lady Jane's having desired, or of Colonel Stewart's having sent her letters, or copies of letters, from the man-midwife or doctor who delivered her, or other proof of the delivery?

10mo, Any mention of advices given her to get proofs, either of pregnancy or delivery?

11mo, Any mention of Lady Jane or Sir John's expectations, of the Duke of Douglas's leaving the estate to her or the children?

12mo, Any mention of Helen Hewit or Isobel Walker's particular fidelity or attachment to Sir John or Lady Jane, or to the children?

13tio, Any mention of schemes of procuring money, upon the prospect of the Duke of Douglas's succession?

14to, Any mention of their having consulted, or intending to consult council, as to the methods of establishing the fact of the childrens birth, or of quieting the suspicions of the Duke of Douglas and others?

15to, Any mention of the names of Michelle, Godfroi, Le Brun, La Marre, Dubois, Favre, or other nurses of the children; Tewis, Mrs. Herbert, Fountaine, Clinton, Norris, or M'Archer?

16to, Any mention of a person's being employed to copy for them letters of importance in the French or English language?

Edinburgh 14th July 1766. This is the memorandum given me in by Mr. John Davidson, mentioned in and to which the report signed by me, of this date, relates.

(Signed)

ROBERT LEITH.

NUMBER V.

LETTER from Mrs. Hepburn to Colonel Stewart.

AS the weather is so excessively bad, I dare say my Lady does not think of stirring till it is better; for which reason I have ventured to salute you once more, in hopes that it shall find you still at Aix.

I had a double pleasure in receiving yours yesterday, as it inclosed one from our Bob, which we had longed for much. I thank you, my dear Mr. Stewart, you have the genius of making people happy, and you see fortune puts it in your way. You tell me I am lazy: I wonder you don't rather say, that I'm most impertinently troublesome; for I think I have writ to you every other day for this week past. I find you have flattered Mr. H. with the hopes of tennis; but how your schemes agree with your leaving Aix, I don't know: for my own part, I have entirely lost all inclination to be at Aix, since I can't have the pleasure of seeing my Lady and her family there; I rather should chuse to be here, as we have some chance of seeing our country-people sometimes; however, I am a passenger, as things stand now. Pray tell me something of my black gown, and Mr. H——'s coat, how we shall meet with them again, for that is—the chief part of my estate.—We were enquiring last night, at some of our people, why L——O. talks of going over.—They seemed surpris'd that we did not know, that there is an express act of parliament, which obliges any lady that has a child to bear, who shall be apparent heir to any British estate, to bear it in Britain, or the sea, as the property of Britain, or in the English ambassador's house, or in a house that the English ambassador, in any foreign country where one may be, calls his. This, they say, is absolutely so. Sir James Johnston put his daughter on her guard with respect to this act, but my L—d thinks nothing of his can possibly succeed; he thinks it needless; however, he leaves it to Sir James to determine, and is uncertain whether she goes or not. I forgot one point; an act of parliament is necessary to make children, born abroad, capable to succeed, which is always granted, except where a powerful opposition is made to it; at any rate, the act costs a great deal of money. Woes my heart for my poor Madam Hewit!

Pray tell me, have your family got any thing in the lottery?

Mr. Baxter, your friend, is just come in, and sends his respects. We are got into the worst house in Liege; a prison, which you'll think strange; we pay 10 pound a month for dinner and supper and lodging; but such lodging!—in short, the whole affair is horrid; but we had no choice; to go there or lie in the street, as our thoughts of going to Aix made us not seek a house till the day before we were to leave our old one.

Our most affectionate respects to my dear Lady Jane and Madam Hewit, and pray make our compliments to the Baron, if he is at Aix.—My dear Sir, I am yours.

Thursday.

N U M B E R VI.

LETTER from Mr. William Hamilton, Minister at Douglas, addressed to Colonel John Stewart, at Balfour's coffee-house, Edinburgh.

SIR,

I HAD the honour of yours just as the Duke and Dutches of Douglas were going to Edinburgh; no doubt you know the melancholy occasion of their leaving this place; and, as they were in so great distress, on account of the shocking and alarming Providence they had met with, I had not a proper opportunity of delivering your letter to her Grace, otherways you may be sure I would have done it; for I never was acquainted with any lady in all my life, for whom I had so great a regard as Lady Jane Douglas, and I would not grudge to ride a thousand miles to serve her dear son. But I am sorry to tell you, that I have too much ground to suspect, that it is not in the Dutches's power to reconcile my L. D. to the charming boy, for I fear some ill designing and malicious persons have been at all the pains in the world to alienate his affection from Lady Jane, and the dear pledge she has left behind her. I have returned your letter to the Dutches, and would have done it sooner, if I had not been very much indisposed these ten days past. With my best wishes to yourself and your dear son, I am,

SIR,

Your most humble Servant,

WILL. HAMILTON.

Douglas, Dec. 25th,
1758.

N U M B E R VII.

QUERIES to Doctors Clerk, &c. and
answers.

I. **M**AY a woman, who has her menses, though her age is fifty years, have children?

II. Do you know any reason why a woman of fifty, who has her menses, may not have twins as well as one child?

After considering, with due attention, the above questions, we are of opinion,

1mo, That a woman, though she is fifty years of age, may have children if she has her menses.

2do, We know no reason why a woman of fifty years of age may not have twins as well as one child.

(Signed) DAV. CLERK.
ADAM AUSTON.
THOMAS YOUNG.
ROBERT SMITH.

Edinburgh, 4th Sept.
1766.

P R O O F

N U M B E R VIII.

PROOF taken in England, with respect to SHOLTO's re-baptism, &c. and which was reported to the Tournelle.

DEPOSITIONS des témoins produits, qui ont prêté ferment, et ont été examinés le 29 Avril 1763, chez Robert Symonds dans la paroisse d'Hampstead, dans le comté de Middlesex, en vertu et en conséquence d'un jugement rendu par la chambre de la Tournelle Criminelle du Parlement de Paris, dans le Royaume de France, et d'une commission, en conséquence d'iceluy, ordonnée par icelle chambre, dans une certaine affaire y établie et poursuivie, touchant un crime de supposition *de part*, lequel crime fut commis l'an 1748, dans la ville de Paris, par le Chevalier Stewart, Lady Jeanne Douglas, sa femme, et Madame Hewit; laquelle sentence est datée du 26 et scelée du 29 Mars, de la présente année 1763, et est écrite en langue Francoise, et est traduite de cette langue en langue Angloise, par Isaac Netto, notair public à Londres.

PARDEVANT moi Thomas Lane, un des maîtres de la grande cour de Chancellerie de la Grande Bretagne, et pareillement un des juges de paix de sa Majesté pour le comté de Middlesex, résidant dans la dite paroisse de Hampstead, quand je suis à la campagne; et dans la paroisse de St. Clement dans le comté de Middlesex quand je suis à la ville:

Thomas Worfdal de la paroisse de Hampstead, dans le comté de Middlesex, âgé de 70 ans et au dela, ayant été produit, ayant prêté ferment, et ayant été examiné, déposé comme il suit:

Qu'il est clerc de l'église de la dite paroisse depuis plus de trente ans, ou environ, et produit le registre de la dite paroisse dans lequel
livre

livre font mis les naissances et les baptêmes de la dite paroisse, excepté ceux qui sont enrégistrés dans le registre qui garde là le ministre des Presbitériens Protestans, depuis l'année 1737, jusqu'à la présente année 1763. Et ce déposant dit de plus, qu'il a examiné le dit registres très soigneusement, et chaque enrégistrement, qui y a été fait des naissances ou des baptêmes d'enfans pendant les années 1750, 1751 et 1752, et dit, qu'il n'y a point d'enrégistrement dans le dit registre de la naissance ou du baptême de Thomas-Sholto, ou de Sholto-Thomas, ou de Sholto, ou d'aucune autre personne, nommée comme le fils du Colonel Jean Stewart et de Lady Jeanne Douglas, ou de l'un ou l'autre des deux. Et ce déposant dit, qu'il connut une Dame, il y a environ 20 ans, qui s'appelloit Lady Wigtoun, qui logeoit avec la soeur de ce déposant, Mademoiselle Marie Wareing, dans cette paroisse. Et ce déposant dit, qu'il ne connoit pas, et qu'il ne croit pas, qu'aucun enfant quelconque fût baptisé dans l'appartement de la dite Lady Wigtoun, pendant sa résidence dans la dite paroisse, car s'il y avoit eû un tel baptême, il croit vraiment qu'on l'auroit envoyé chercher pour y être présent, comme on l'envoie chercher ordinairement, pour être présent aux baptêmes des enfans, dans les maisons particulières, aussi bien que dans l'église en public; et pour cela ce déposant comprend, et croit vraiment que si quelqu'enfant avoit été baptisé dans l'appartement de la dite Lady Wigtoun, la cérémonie auroit été faite par un ministre de l'église d'Angleterre, parceque la dite Lady Wigtoun a toujours été à l'église de la dite paroisse, et n'a jamais été là, à l'assemblée des Presbitériens, suivant la meilleure connoissance et croyance du déposant. Signé) THO. LANE, THO. WORSDELL, Clerc de la paroisse.

MARIE WAREING, de la dite paroisse de Hampstead, fileuse, âgée de 60 ans, et plus, ayant été produite, ayant prêté serment, et ayant été examiné, dépose comme il suit :

Que dans l'année 1751, aussi bien que cette déposante s'en souvient, Lady Wigtoun vint loger chez cette déposante dans une petite Maison, où cette déposante demeure dans la dite paroisse depuis environ vingt ans, et cette déposante dit, que par un memorandum, fait par cette déposante de sa propre écriture il paroît que la dite Lady Wigtoun vint loger chez elle le 14 Avril, et que l'appartement fut arrêté, pour elle, Miss Primrose, et Mademoiselle Greig, à raison de 15 sterlings par semaine, pour 4 mois certainement, et cette déposante croit, que la dite Lady Wigtoun continua de loger avec cette déposante pendant les dits 4 mois, et pas plus long tems. Et cette déposante dit, que la dite Lady Wigtoun vecut, pendant sa résidence dans la maison de cette déposante, d'une manière fort particulière, et qu'il n'y eut que très peu de personnes qui luy firent des visites. Et cette déposante dit, qu'elle ne sçait pas qu'aucune personne nommé le Colonel Stewart, ou

Lady

Lady Jeanne Douglas, aït jamais fait de visite à la ditte Lady Wigtoun, dans son dit appartement seul ou en compagnie, et cette dépositante dit, que la ditte Lady Wigtoun, pendant sa ditte résidence, loua deux places dans l'église paroissiale de Hampstead, où elle et Miss Primrose alloit toujours entendre le service divin. Et cette dépositante dit, que rarement elle sort de chez elle, excepté pour aller à l'Eglise ou au marché, et dit, qu'elle croit vraiment qu'il n'y a jamais eû d'enfant baptisé dans l'appartement de la ditte Lady Wigtoun, pendant le tems de sa résidence dans la maison de cette dépositante, et que s'il y avoit eû là aucun enfant baptisé pendant cette résidence, elle, cette dépositante, croit vraiment, qu'elle auroit dû le sçavoir, ou en entendre parler. (Signé) THO. LANE. MARIE WAREING.

Dépositions des temoins produits, qui ont prêté serment, et qui ont été examinés le 2 May 1763 chez le commissaire Thomas Lane, Ecuyer, à Londres, suivant la fixation d'ycelles à cet effect.

JEAN TISDALL de la paroisse de St. George, Bloomsbury, dans le comté de Middlesex, Gentilhomme, âgé de 48 ans, ou environ, ayant été produit, ayant prêté serment, et ayant été examiné, dépose comme il suit :

Qu'il paroît, par les livres tenus par le clerc des papiers de la prison du Banc de Roi, que Jean Stewart, que ce dépositante est informé, qui étoit le Colonel Jean Stewart, fut le 6 Février 1750, commis au Géolier de la prison du Banc-royal par M. Justice Denison, un des Juges de la Cour de sa Majesté du Banc-royal à Westminster, à l'instance d'Agnes Johnston, et qu'il obtint la liberté des regles de la ditte prison le même jour, et qu'il logea alors dans la maison d'un nommé Plate, Barbier, dans la liberté des dittes regles ; et que le mot (*gone*) (*parti*) est marqué dans le dit livre ; par quoi ce dépositante entend, et est informé, que le dit Jean Stewart fut déchargé de la garde de la ditte prison ; il, ce dépositant, ne voit pas comment, ou de quelle manière, il fut ainsy déchargé ou dans quel tems. (Signé) THO. LANE. JEAN TISDALL.

ANDRE CLINTON, un des commis du bureau de la guerre à Whitehall à Londres, âgé de 37 ans, ou environ, ayant été produit, ayant prêté serment, et ayant été examiné, dépose comme il suit ; Qu'autant qu'il s'en souvient, et comme il le croit, il fit la connoissance de Jean Stewart, à present Chevalier Jean Stewart, Baronet, (qu'il a entendu dire qu'il étoit marié à Lady Jeanne Douglas, sœur du feu Archibald Duc de Douglas) ;

Douglas) l'an 1750; car ce déposant trouve, par un memorandum dans son porte-feuille, datté du 7 Janvier 1751, qu'il reçut ce jour une guinée de Sir John pour la peine qu'il avoit prise dans ses affaires: mais il ne put se souvenir quelle sorte de peine c'étoit: que ce déposant ne fut jamais présenté à Sir John par personne, et qu'il luy arriva de faire connoissance avec Sir John parcequ'il logeoit dans la même maison que lui; et ce déposant dit, qu'il entendoit fort peu de François dans les années 1750 et 1751, quoique, à présent, il entend un peu mieux le sens quand il le lit; qu'il copia un manuscrit François pour M. Mackercher, intitulé (autant qu'il s'en souvient) *Examen des finances Françaises*, lequel M. Mackercher donna au Capitaine Livingstone, qui en fit présent à André Stone, Ecuyer, comme ce déposant a été informé, mais il ne se souvient pas qu'il ait été comparé et trouvé exact; cependant il peut avoir été comparé: et ce déposant dit plus, qu'il a quelque foible souvenir d'avoir copié quelque lettre ou papier signé La Marr, suivant le desir de Sir John; mais ne souvient pas d'un seul mot de contenu, ou s'il y avoit plus d'un papier, vû cet intervalle de tems; et ne se souvient que Sir John fut présent, ou qu'il ait dicté, tandis que ce déposant copioit, et croit qu'il copia d'après une lettre ou un papier signé La Marr, d'après un foible souvenir de ce nom, la seule circonstance dont il se souviennne; et ce déposant ne peut pas, à présent, se souvenir du mois particulier dans lequel il copia le dit papier ou la ditte lettre, mais il croit que ce fût en 1751; ni s'il fut écrit en un jour ou en plusieurs fois, et dit, qu'il ne sçait, ni se souvient, qu'il ait reçu aucun argent de Sir John excepté la guinée, cy-dessus mentionnée, pour la peine qu'il avoit prit dans ses affaires en général: et cependant de plus dit, que par un autre memorandum dans son dit port-feuille, en datte du 24 Juin 1751, il trouve qu'il prêta à Sir John une guinée dont luy (ce déposant) n'a jamais été païé jusqu'à ce moment, ni reçû aucune récompense, quoique Sir John lui ait donné beaucoup de peine dans ses affaires, Sir John, en quelque façon, l'ayant perdû de vuë exprès de ce deposant, quelque tems avant que de partir pour l'Ecosse; et ce déposant ne se souvient pas, non plus, d'avoir jamais reçû aucune lettre de Sir John depuis, excepté une, qu'il pense que fût le 1 Janvier 1763, à présent dans ses mains; et ce déposant dit de plus, qu'il ne peut pas dire si la ditte lettre ou le dit papier, signé La Marr, étoit écrit par un Anglois ou par un François; et ne se souvient pas de l'espèce d'écriture, ou sur quelle sorte de papier il étoit écrit, particulièrement, si la lettre étoit pliée et adressée comme une lettre originale, ni si elle avoit aucune marque de post ou cachet; et ne se souvient pas dans quel lieu, ni à quel sujet, il copia la ditte lettre ou le dit papier pour Sir John; et dit, qu'il ne se souvient pas que Sir John, dans aucun tems, luy ait dit pour quelle but la ditte lettre ou le dit papier étoit destiné

destiné, ni son contenu, ni ce à quoi ce contenu avoit rapport ; que la ditte lettre ou le dit papier ne luy fut jamais montré depuis qu'il l'a copié (s'il l'a copié) : et une copie imprimée du service de M. Douglas, dans lequel les quatre lettres de Pier La Marr sont contenues, étant montré au déposé, et luy étant interrogé, si toutes ou aucunes d'elles sont du même contenu que la lettre ou les lettres que luy le déposé a copiées pour Sir John, luy, le dit déposé, ayant soigneusement examiné ces quatre lettres Françaises, présentement à luy montrées, dit, qu'il ne se souvient pas, après les avoir lues, qu'il ait jamais vu, lu, ou copié aucune lettre, ou aucune lettres Françaises du même contenu qu'icelles ; et dit, que s'il a jamais vu, lu, ou copié aucune lettre, ou lettres Françaises, suivant le desir de Sir John, il les a copiées de la même manière, aussi innocemment que feroit un honnête homme pour en obliger un autre, et sans mauvais dessein ; et il n'a appris jamais qu'il fût jamais fait, ou dû être fait, aucun bon ou mauvais usage de ces lettres ; que s'il a jamais copié aucune lettre ou aucun papier pour Sir John, luy, ce déposé, entend que ce contenu doit être différent d'aucune de quatre ci-dessus mentionnées, parcequ'il ne peut pas se souvenir d'aucune chose du contenu des dites quatre lettres, vu cet intervalle de tems, quoiqu'il les ait très attentivement examinées ; et souhaite, de tout son cœur, l'occasion de voir les copies identiques que le Chevalier Jean Stewart dit avoir été faites par ce déposé, ce qui, tout d'un coup, banniroit tout doute et oubli, causé par un période de douze ans ; dit, qu'il ne se souvient pas d'avoir été prié de copier la ditte lettre ou les dites lettres exactement, mot pour mot ; et ne se souvient pas que Sir John l'ait jamais prié de faire les copies semblables aux originaux ou à l'original, ou d'imiter l'écriture ; et dit, qu'il ne se souvient pas que Sir John l'ait prié ce déposé de mettre le nom de Pierre La Marr au bas d'aucune copie ; et qu'il ne doute qu'il n'ait taché d'orthographier de la même manière que le papier d'après laquelle il copioit, comme tous copistes doivent faire, et ne se souvient pas que personne fût présent tandis qu'il copioit ; et de plus dit, que luy, ce déposé, connoit l'écriture de Sir John ; qu'il a vu Lady Jeanne Douglas plusieurs fois, et croit qu'il a aussi vu Mademoiselle Hewit, mais qu'il n'a jamais conversé avec elles ou aucune d'elles, au sujet d'aucunes lettres, ou d'aucuns papiers, et dit, qu'autant qu'il peut s'en souvenir, il n'a jamais vu, ni ne connoit l'écriture de Lady Jeanne Douglas ou de Mademoiselle Hewit ; le dit déposé de plus dit, que Sir John ne luy a jamais dit, qu'il avoit écrit l'original ou les originaux, ou aucun d'eux ; et dit, que lui, ce déposé, n'a jamais, de sa vie, écrit ou copié de papier ou de papiers, dont il sçut ou soupçonnât le moins du monde, qu'on fit, ou se proposa de faire, le moindre mauvais usage, ni ne voudroit, pour l'univers, être intéressé dans aucune affaire

de

de cette espèce ; et de plus dit, que certainement il rendit tous les papiers à Sir John, que luy, ce déposant, peut avoir copié, selon son desir ; et qu'il n'en sçait rien et ne soupçonne pas où ils sont à présent ; et le déposant ne connoit personne qui les ait jamais vus ; et dit, qu'il n'a jamais dit à aucune personne quelconque, autant qu'il s'en souvient que lui, le déposant, copia les dits papiers ou le dit papier ; que jamais personne ne l'a prié de le tenir secret ; et ne se souvient pas qu'on luy ait jamais dit, qu'il devoient être envoyée au Duc de Douglas ; et le dit déposant dit de plus, qu'autant qu'il peut s'en souvenir, il ne s'est jamais entretenu avec Monsieur et Madame Kercher de ces lettres, avant ces derniers mois, et après avoir été questionné sur ces lettres par la Duchesse de Douglas et Monsieur Dagge, aux quelles deux personnes il dit, qu'il ne s'en souvenoit pas, parcequ'il croyoit que c'étoient des lettres du Comte de Marre, Monsieur et Madame Kercher luy dirent, au déposant, qu'il ne s'en souvenoit pas, ne les ayant jamais vues ; et de plus dépose, qu'il n'a jamais rien sçu d'un certain Dubois, Peintre, et qu'il ne l'a jamais vu, et que, suivant sa meilleure connoissance et croyance, il n'a jamais entendu prononcer son nom auparavant ; et le dit déposant de plus dit, qu'il n'a jamais essayé de varier son écriture, en prenant une autre maxime d'écrire qu'à son ordinaire, et qu'il ne se souvient pas, que Sir John l'ait jamais prié d'imiter aucune écriture ; et le dit déposant de plus dit, qu'il n'a jamais été en correspondance avec Sir John au sujet de ces lettres, ou d'aucunes lettres, ou aucunes papiers quelconques, ou avec aucune autre personne sur ce sujet, excepté qu'après que la Duchesse de Douglas et Monsieur Dagge lui eurent parlé au sujet de ces lettres, dans le mois de Decembre dernier, lui le déposant écrivit à Monsieur Gray d'Edinburgh, pour le prier d'examiner quelques lettres du Comte de Marre, dites avoir été copiées par le déposant et pour luy faire sçavoir au déposant, s'il pensoit qu'elles furent de son écriture ; à quoi le dit Monsieur Gray écrivit à ce déposant en réponse, qu'il avoit vu une lettre signée Pierre La Marre (non Comte de Marr) mais ne pouvoit pas dire, si elle étoit de l'écriture du déposant ou non ; mais cette lettre le déposant l'a perdue, et ce déposant dit de plus, qu'il ne se souvient pas, que Sir John l'ait jamais instruit d'aucunes particularités, ayant rapport à l'accouchement de Lady Jeanne à Paris, ou à l'accoucheur qui l'accoucha, ou que Sir John ait pris, ou ait eu envie de prendre des avis d'avocats, à l'égard des preuves de l'accouchement de Lady Jeanne, et de plus dit, qu'au tems où le déposant fit connoissance avec Sir John, les personnes qui frequentoient Sir John, suivant sa mémoire, étoient Monsieur Stual, chirurgien dans York-buildings, Monsieur Grindlay, marchand de draps, Monsieur Murray, munitionnaire d'un vaisseau de guerre, Monsieur et Madame Kercher, le Capitaine Living-

ston, Monsieur Bedall, Monsieur Farquhar, et le Capitaine Baillie ; et de plus dit, qu'il connoissoit Sir John, quand il étoit dans la prison de la cour du banc royal, ayant été souvent l'y voir, et qu'il croit qu'il y fut mis dans cette prison de la cour du banc royal, l'an 1750 ou 1751, et qu'il y resta un ou deux ans. (Signé) THO. LANE. ANDRE CLINTON.

N U M B E R IX.

EXCERPT of a Memorial drawn up by Mr. Andrew Stuart in France, for his French Council, produced by him the 18th August 1764.

N O V E M B R E 1762.

MEMOIRE à consulter, touchant la grossesse et l'accouchement de Madame Stewart, dans lequel on expose les preuves de ces faits, qui ont été fournies de la part de Monsieur le Chevalier Stewart ; et on les compare avec les découvertes faites, depuis peu, en France, pour assurer de la réalité de cet accouchement.

LE Duc de Douglas, pair d'Ecosse, mourut au mois de Juillet 1761 ; il laissa une succession, qui peut monter à près de neuf millions de livres de France, en y comprenant ses terres. Cette succession et la plus grande partie de ces biens sont contestés, d'un côté, par le Duc d'Hamilton, premier pair d'Ecosse, qui est le chef et l'héritier mâle de la maison de Douglas, et qui succède aux honneurs et titres de cette ancienne famille : et de l'autre côté, par Archibald Stewart, soi disant fils de Myladi Jeanne Douglas, soeur du feu Duc de Douglas, et épouse du Chevalier Jean Stewart.

Le prétendu fils de Lady Jeanne, et neveu du feu Duc de Douglas, est, à ce qu'on prétend, né à Paris le 10 Juillet 1748, et l'on dit, que Lady Jeanne accoucha de deux fils jumeaux, dont il est l'aîné.

L'histoire de cet accouchement a toujours été soupçonnée : elle fut accompagnée de plusieurs circonstances très équivoques, et l'âge de

Madame Stewart, la mere, qui avoit alors 49 ou 50 ans, la rend encore suspecte.

Le cadet de ces jumeaux est mort en Ecosse au mois d'Avril 1753, et Madame Stewart, la mere, mourut dans le mois de Novembre de la même année. Le Chevalier Stewart, le pere, vit encore, et par les loix d'Ecosse, il a le droit d'être administrateur des biens de son fils aîné, qui n'a que 14 ans.

Après la mort du Duc de Douglas, arrivée en 1761, le Chevalier Stewart a été forcé de donner des preuves de la naissance de son fils, à fin de le mettre dans le cas de pretendre à la succession du feu Duc de Douglas : cette démarche étoit nécessaire, tant à cause des doutes que l'on avoit sur la réalité de l'accouchement de Madame Stewart, que parceque cet accouchement s'étoit fait clandestinement dans un pays étranger.

Au mois de Septembre 1761, le Chevalier Stewart, entreprit donc de donner des preuves du fait en question ; à cette occasion il a fait entendre des témoins, qui ont déposé, qu'ils avoient vu Madame Stewart grosse ; il n'y en a qu'une, qui est une femme, qui ait attestée avoir, été présente aux couches de cette dame à Paris le 10 Juillet 1748. En même tems, elle déposa, qu'il y avoit d'autres personnes présentes avec elle, mais qu'elle ne sçavoit n'y les noms de ces autres personnes, ni ceux des gens chez qui l'accouchement s'étoit fait, ny le nom de la rue, ou du quartier de Paris, où ils demeurèrent, au tems de cet événement.

Le Duc d'Hamilton, et les autres competeurs d'Archibald Stewart, ne firent point d'objection contre la validité de ces preuves, ainsi Monsieur Stewart, a été récemment reconnu (selon la coutume d'Ecosse) pour véritable fils du Chevalier et de Madame Stewart, et neveu du feu Duc de Douglas. C'est en cette qualité, qu'il réclame les biens du feu Duc, pour les quelles il est en procès, devant le cour de justice en Ecosse, avec le Duc d'Hamilton et le Comte de Selkirk, qui, chacun de leur côté, réclament les biens du Duc de Douglas, dans le même procès, en conséquence de leurs droits respectifs.

Cependant, les tuteurs du Duc d'Hamilton, qui est actuellement un mineur, âgé de sept ans, et le Comte de Selkirk, qui ont tous deux intérêt d'éclaircir cette affaire, remarquèrent, que le Chevalier Stewart, le pere, avoit évité de se servir d'aucun témoignage des personnes évidentes à Paris, qui cependant étoient les plus propres à constater les faits relatifs à l'accouchement en question. Ils avoient aussi observé, dans la deposition de la Demoiselle Hewit (la seule personne qui ait rendu témoignage de l'accouchement) une ignorance, bien étrange, sur les personnes, sur les noms, et sur les faits, qui devoient faire le plus d'impression sur sa mémoire : enfin, toutes les preuves que le Chevalier

Stewart

Stewart avoit ramassées en faveur du fait en question, annoncoient un mystère, et donnoient de soupçons sur la conduite de Madame Stewart, et de son époux, devant, après, et durant l'accouchement prétendu. Cela posé, les tuteurs du Duc d'Hamilton jugèrent qu'il étoit de leur devoir de ne point s'en rapporter à l'histoire débitée de la part du Chevalier Stewart ; ils crurent devoir faire des recherches à Paris, théâtre où l'on avoit placé cet événement important, les dits tuteurs se flattèrent, qu'une recherche de cette nature servit connoître, si les soupçons d'une imposture étoient bien ou mal fondés : ils virent aussi, qu'il étoit de leur devoir de découvrir la vérité, et de constater la certitude de l'accouchement, même dans le cas où les recherches en montreroient la vérité, à fin d'éviter aucune blâme de la part de leur pupille le Duc d'Hamilton, qui pourroit autrement accuser ses tuteurs, par la suite, d'avoir négligé, pendant sa minorité, la seule occasion de connoître la vérité, puisqu'il est, à présent, si jeune, qu'avant que d'arriver au tems d'agir par luy-même, tous ceux, qui sont en état de donner des lumières, à Paris, sur ces événements, arrivés en 1748, pourroient être morts.

Pour remplir cet objet, un des tuteurs du Duc d'Hamilton est arrivé en France, au mois d'Août 1762 ; avec l'assistance, que M. le Lieutenant-général de police a eû la bonté de luy accorder, il est appliqué à cette recherche ; les officiers de police et luy travaillèrent en vain pendant plusieurs semaines, et ils désespéroient déjà de rien découvrir sur l'accouchement en question, lorsque, heureusement, ils ont trouvés des choses qui jettent beaucoup de jour sur cette affaire mystérieuse.

Pour juger de la force des découvertes qu'on a faites, il fera nécessaire de présenter, en même tems, l'histoire fondée sur les temoignages fournis par le Chevalier Stewart, et celle qui résulte des recherches nouvellement faites. La comparaison de ces histoires, et des fondemens de l'une et l'autre, souffrira pour démêler le vrai, &c.

Mr. Stuart then proceeds to give an account of the evidence in the service ; after which he goes on in this manner :

Sur ces indices, Monsieur Stuart, tuteur du Duc d'Hamilton, qui est arrivé exprès dans ce pays, a fait des recherches, d'abord, pour trouver Pierre La Marre, accoucheur, et la Dame Le Brun, qui tenoit un hôtel garny, ou qui louoit des appartemens dans l'année 1748. Monsieur de Sartine, Lieutenant de police, a eû la bonté de s'intéresser très vivement dans une recherche si importante pour la justice et la vérité, et dès qu'on lui eût présenté un mémoire à ce sujet, il remit l'affaire dans les mains d'un de ses principaux officiers de police, avec ordre de donner à cette affaire toute l'attention possible, et de co-operer avec Monsieur Stuart dans les démarches nécessaires pour découvrir la vérité. Pendant plusieurs semaines, Monsieur Stuart, et l'officier de police, furent

furent continuellement occupés conjointement à déterrer les principaux perfonages ; c'est à dire, Madame le Brun et Pierre La Marre ; mais ce fut en vain. Les livres des hôtels, ou chambres garnis, en 1748, ne purent faire découvrir une perfonne du nom de le Brun, tenant ou hôtel ou chambres garnis en ce tems là ; beaucoup de perfonnes du nom de Le Brun furent trouvé, mais aucune d'elles ne convenoit à la description donnée ; on fit même une recherche dans les livres de la capitation de l'année 1748, et l'on n'y trouva perfonne du nom de Le Brun qui loua des appartemens, dans ce tems, au Fauxbourg St. Germain.

Enfin, on a heureusement découvert, que le Chevalier Stewart, et fa femme, avoient donné le change, et qu'au tems de l'accouchement prétendû ils étoient en très bonne fanté, et demeuroient à Paris dans un quartier retiré, et, fous des noms empruntés, logeoient chez une perfonne, dont le nom n'avoit point de reflemblance à celui de Le Brun.

La maifon où ils ont demeuré n'a été découverte que depuis peu de tems ; par bonheur l'hôte et l'hôteffe, qui la tenoient en 1748, vivent encore, et fe refsouviennent des circonftances qui ont amené le dénouement de cette affaire.

C'est au commencement du mois d'Octobre que le tuteur du Duc d'Hamilton a eû vent, que le Chevalier Stewart et fa femme avoient logés à Paris chez un nommé Michel, dans l'année 1748. En confequence il passa, avec l'officier de police, le 12 Octobre chez le dit Michel, qui tient un petit hôtel, qu'on appelle l'hôtel d'Anjou au fauxbourg St. Germain. Ayant trouvé le dit Sieur et la Dame Michel, et appris d'eux, qu'ils avoient tenû ce même hôtel en 1748, l'officier de police leur demanda s'ils avoient leur livre des logeurs, ce qu'on appelle le livre d'infpecteur de police, tout de fuite ils produifirent ce livre, et ayant cherché les feuilles de 1748, on ne trouva perfonne du nom de Stewart, mais on remarqua une entrée fur ce livre, écrite dans les termes qui fuivent, *M. Fleuralt Ecoffois, et fa famille, entré le huit Juillet 1748.* Ayant demandé au Sieur Michelle et à fa femme, s'ils fe fouvenoient de cette perfonne-là, et de combien de gens la famille étoit compofée, ils repondirent, qu'ils s'en fouvenoient très bien, même comme s'ils étoient devant eux à ce moment : que la famille confiftoit en un Monfieur et deux dames, dont l'une étoit la femme du monfieur, et l'autre une compagne de cette dame ; que la compagne ne parloit pas le François du tout, mais que le monfieur le parloit fort bien, et fa femme paffablement. Que le monfieur pouvoit avoir 60 ans : que la dame étoit mince et pâle, et la compagne d'un grand taille et forte : enfuite on leur demanda, s'ils fe fouvenoient des noms de ces perfonnes, et s'ils étoient bien sûrs, que c'étoit le 8 Juillet qu'elles étoient entrés chez eux. Pour les noms, difoient-ils, nous ne nous en fouvenons pas bien, mais vous le trouverez dans ce livre-là, car il me femble que c'étoit

c'étoit le monsieur lui-même qui écrivit ce que vous voyez là, et pour la datte vous pouvez être bien sûre qu'elle est exacte, car elle a été écrite récemment, c'est à dire, un ou deux jours, au plus tarde, après leur arrivée: et même, en supposant que le Monsieur n'eût pas écrit cela dans le livre que deux ou trois jours après son arrivée, il eût fallu qu'il y eût mis la datte précise de son entrée, parceque nos livres sont visités souvent par les officiers inspecteurs de police, et sont tenus fort exactement, et vous verrez dans le même livre plusieurs dattes des entrées d'autres personnes.

Sur ce que la femme Michel avoit dit, le tuteur du Duc d'Hamilton régarda attentivement l'écriture dans le livre, et demeura persuadé que ces mots, *M. Fluralt Ecoffois, et sa famille, entré le 8 Juillet 1748*, sont de la main du Chevalier Stewart, ayant eû souvent occasion de voir de son écriture.

On demanda après à ces gens, combien de tems les étrangers étoient restés chez eux, ils répondirent, qu'ils ne pouvoient pas s'en ressouvenir exactement, mais qu'il leur sembloit que c'étoit environ quatre, cinq, ou six semaines.

Ensuite on leur fit la question suivante, N'est ce pas chez vous que cette dame est accouchée?

Point du tout, répliqua la femme Michel, elle étoit accouchée bien du tems avant que d'entrer ici; car je me souviens fort bien, que peu de jours après leur entrée chez nous, ils dirent, un jour, qu'ils avoient un petit voyage à faire à un village dans le voisinage de Versailles, pour amener un enfant qu'ils avoient là; et qu'effectivement, peu de tems après, c'est à dire le 4 ou 5 jours de leur première arrivée, ils allèrent à quelque village, que je pense étoit dans le voisinage de Versailles, et revinrent, ou le lendemain ou deux jours après, amenant avec eux un enfant. Elle continua, que ces gens se plaignoient, que l'enfant avoit souffert par les mauvaises nourrices, et prièrent l'hôtesse d'en chercher une bonne, ce qu'elle fit tout de suite, et ayant trouvé une de ses voisines, qui étoit accouchée depuis peu, et qui avoit un enfant qu'elle allaitoit, l'hôtesse recommanda cette femme pour nourrice. Et qu'ensuite cette nourrice prit le soin de l'enfant, et l'allaitoit pendant tout le tems que ces gens restèrent à Paris, ce qui fut environ 3 ou 4 semaines après avoir amené en ville l'enfant. Qu'ils firent beaucoup d'instances à cette nourrice pour l'engager à les accompagner à la campagne; qu'ils eurent beaucoup de bonté pour elle; et elle se souvient, qu'ils luy donnèrent un habit brun de cheval, avec des boutons d'or. Que quand ils partirent de Paris ils prirent la route de Dammartin, et ammenèrent avec eux la nourrice et l'enfant; mais elle ne sçait à quel endroit ils allèrent ensuite, parcequ'ils n'ont jamais vu la nourrice depuis ce tems-là, et ne sçavent pas si elle est encore vivante, mais qu'ils apprirent,

il y a quelques années, qu'elle demouroit à Compiègne en Picardie, et étoit alors concierge de l'hôtel de Madame la Marquise de Pompadour à Compiègne, et que son mary étoit un menuisier, &c.

Mr. Stuart, among other things, says Madam Michelle told him: Qu'elle se souvient cependant d'avoir entendû dire à Monsieur, que sa tête étoit presque cassée du bruit qu'il avoit entendû, pendant quatre jours, dans un autre hôtel, où il avoit démeuré, avant que de venir à l'hôtel d'Anjou; et elle pense, qu'il faisoit mention de l'hôtel de Châlons, &c.

The nurse Favre told him: De plus, elle se souvient, qu'elle leur avoit ouï-dire, que cette dame étoit accouchée de deux jumeaux, mais que l'un étoit mort, &c.

The discoveries at Reims are introduced in this manner:

Leur séjour à Reims, avant que de partir pour les couches prétendues faites à Paris, ne fut que de 15 jours, qui ont été depuis la milieu de Juin jusqu'au deux Juillet 1748, selon ce que les témoins ont déposé. C'étoit chez Madame Hibert, dans la rue du Bourg à Reims, qu'ils demeuroient. On a trouvé cette Dame Hibert, qui dit, qu'elle étoit alors en Flandres, mais ayant fait venir la fille, qui leur avoit loué l'appartement, cette fille conta les circonstances suivantes.

Que pendant le tems de leur séjour chez elle, Madame Stewart avoit tout l'air d'une personne enceinte, à ce qu'elle pouvoit juger par sa taille, mais que dans sa façon de s'habiller, elle portoit toujours un petit panier, ou une jupe à panier ronde, qui empêchoit juger exactement de son état; que son ventre n'augmenta pas, pendant tout le tems qu'elle l'a vuë; que la voyant souvent travailler à une layette, elle lui demanda pour qui c'étoit, mais qu'elle ne voulut pas luy dire, et qu'elle sembloit vouloir plutôt cacher sa grossesse, par sa façon de s'habiller; qu'elle n'avoit jamais vuë Madame Stewart deshabiller, ou entrer et sortir de son lit, parceque personne n'entroit alors dans sa chambre, qu'il n'y avoit pas moyen de la voir s'habiller, ou se deshabiller; qu'elle n'avoit non plus jamais eû occasion de voir son sein, qui étoit toujours caché par la façon de s'habiller; que cependant elle n'avoit pas l'apparence d'une personne proche de son terme, pas même celle d'une personne grosse de 6 ou 7 mois, mais plutôt l'air d'une femme, qui n'étoit enceinte que de peu de mois; en un mot, elle est bien assurée, que suivant les apparences elle n'avoit pas l'air d'une dame que dût accoucher bientôt, qu'elle paroissoit être d'une santé assez delicate: qu'elle ne sortoit que très peu de la maison; ne voyoit presque per-
sonne

sonne pendant son séjour ; et qu'elle restoit presque toujours dans sa chambre.

Que lorsque, par curiosité, elle avoit demandé quelques fois à cette dame, pour qui elle faisoit la layette, et si c'étoit elle qui alloit accoucher, la dame ne luy avoit fait aucune réponse, mais l'autre dame, sa compagne, lors de ces interrogations, luy faisoit souvent des signes de se taire, de sorte qu'elle comprit par les signes, ou les mines de cette dame, qu'il ne falloit pas faire ces questions ; enfin la fille Hibert, ajoutée, qu'il y avoit, dans les façons de ces gens, quelque chose de caché, qu'elle ne pouvoit pas comprendre.

Que la dame étoit très aimable, mais que le monsieur luy parut étourdi et méchant, et que la compagne ne parloit pas François ; que la dame paroissoit avoir 36 ou 40 ans, et le monsieur 60.

Qu'elle imagine qu'ils étoient allés loger dans une autre maison à Reims, avant que de partir pour Paris, mais qu'elle ne les vit plus, depuis qu'ils furent sortis de chez elle ; que quelque tems après elle avoit entendu dire que la dame étoit accouchée à Paris, et qu'il y avoit eû à l'accouchement deux ou quatre témoins Anglois, qu'on avoit fait venir exprès, parcequ'il importoit beaucoup, que la naissance de l'enfant fût bien constatée, la dame étant de grande condition ; et qu'elle n'avoit jamais appris dans quel quartier de Paris, la Dame étoit accouchée, ny qui avoit été son accoucheur, &c.

Mr. Stuart sums up his discoveries as follows :

En comparant les faits allegués par les temoins du Chévalier Stewart, et les découvertes faites par le tuteur du Duc d'Hamilton, on peut faire les observations suivantes :

1. Qu'il n'y a point de doute, que Monsieur et Madame Stewart, et la Demoiselle Hewit, sont partis de Reims pour Paris le 2 Juillet 1748 ; qu'ils sont revenus à Reims vers le milieu d'Aoust ou même (en donnant le plus d'étendue possible au tems de leur absence) vers la fin de ce mois d'Aoust ; ainsi leur absence, en tout, n'a été que de six, ou, tout au plus, de huit semaines.

2. Qu'il faut, que l'accouchement se soit fait pendant ces six ou huit semaines, ou que Madame Stewart n'est pas accouché du tout ; et même, que si cette accouchement n'a pas été avant leur entrée chez la Dame Michel, il n'a jamais existé, parcequ'en quittant la maison de Madame Michel, ils ont été à Dammartin, et de Dammartin à Reims ; il est bien clair, qu'elle n'est point accouchée ny à Dammartin ny chez la Dame Michel ; supposant donc, que Madame Stewart ait accouché avant que d'entrer à l'hôtel d'Anjou, il falloit, que ce fût, ou sur le chemin de Reims à Paris, pendant le troisième jour du voyage, ou à Paris, pendant les quatre jours, du quatrième au huitième de Juillet : mais, premièrement,

mièrement, il n'est vray-semblable qu'elle eût pu être en état d'aller à l'hôtel d'Anjou fitôt que le huitième Juillet, si l'accouchement eut été si récent ; pourquoi auroit-elle, dans ce cas, cachée cet événement en entrant à l'hôtel d'Anjou ? Encore, ces suppositions sont tout-à-fait exclues par l'histoire donnée par eux-mêmes, puisqu'on dit, et la femme Hewit a déposé, que l'accouchement avoit été fait le dixième Juillet, et qu'ils étoient restés dix jours après dans la même maison ; ainſy, s'il est vray, qu'ils sont entrés chez la femme Michel le huitième Juillet, et qu'elle n'est point accouchée chez elle, il suit nécessairement, que Madame Stewart n'a point accouchée du tout.

3. L'on ne peut pas douter, que Monsieur et Madame Stewart, et la Demoiselle Hewit ne soient demeurés chez la femme Michel à Paris, au mois de Juillet 1748. Le fait important est bien constaté, non seulement par la description donnée de ces trois personnes par la femme Michel et son mary, par les femmes Favre et Blainville, et par la conformité des dattes, mais encore par la route que ces étrangers prirent en partant de chez la femme Michel : l'hôte et l'hôtesse se souviennent qu'ils allèrent tous de suite à Dammartin : la femme Favre dit, qu'elle les y accompagna, et y resta avec eux quelques jours : l'hôtesse à Dammartin se souvient de leur arrivée et de leur séjour chez elle, avec un enfant, et la femme Favre sa nourrice : cette hôtesse, la femme Favre, et plusieurs autres, se resſouviennent de la rencontre à Dammartin, de la nourrice qui y étoit venue pour la moisson : elles se souviennent pareillement, de leur départ avec cette nourrice et son mary pour Reims : et il est constaté, par plusieurs personnes de Reims, qu'ils amenèrent avec eux une nourrice et son mary, qu'ils avoient trouvés coupant les bleds à Dammartin : ainſy, il est hors de doute, que les personnes, qui retournèrent à Reims de cette manière, étoient les mêmes qui avoient un peu avant demeurées chez Madame Michel à Paris.

4. Accordant donc, que ces étrangers ont actuellement demeurés chez la femme Michel, il ne reste qu'à constater, que leur entrée chez elle s'est faite le huitième Juillet 1748 ; on peut dire, que ce qui est écrit dans les livres des logeurs, en est une preuve ſuffiſant. Ce livre est tenu avec la plus grande exactitude, ainſi qu'il le falloit, parceque les officiers inspecteurs de police viſitent les hôtels, et examinent ces livres de tems en tems. On ne peut pas croire, que Monsieur Stewart y auroit mis une datte plus reculée que la vray datte de son entrée, puisqu'il eût été plutôt de son intérêt de faire le contraire ; mais il n'y avoit pas moyen de déguiser la vray datte de l'entré ſur ces livres, qui sont tenus dans la plus grande regle, et où il y a tant d'autres personnes entrées avant et depuis ; peut-être même, que ces entrées ont, pour la plus-part, ſervy pour regles à la femme Michel, en faisant ſes demandes aux logeurs pour le tems de leur séjour : mais independamment de tout cela,

le tems du séjour de ces étrangers chez Madame Michel, recule nécessairement la date de leur entrée au huitième Juillet ; au moins, la femme Michel dit, qu'elle pense qu'ils demeurèrent, au moins, quatre semaines chez elle. La femme Favre dit, qu'ils restèrent à l'hôtel d'Anjou environ quinze jours après le tems qu'elle fut arrêtée pour nourrice, et qu'ils y avoient été quelques jours avant ce tems. La femme Blainville dit, que l'enfant fut amené à cet hôtel environ huit jours après l'entrée de ces étrangers, et qu'elle les a laissés à l'hôtel d'Anjou, quand elle la quitta pour entrer au service de Madame Goury ; et elle a parlé d'un voyage à Versailles avec eux, dans la semaine qui suivit le tems où l'enfant fut amené chez eux, et de quelques petites tournées à Paris, qu'ils firent peu de jours après ce voyage ; d'où l'on voit qu'ils ont été, au moins, trois ou quatre semaines chez la femme Michel. Il est encore constant, qu'au 12 d'Août Monsieur et Madame Stewart, et la Demoiselle Hewit, étoient à Dammartin, puisque la lettre de la Demoiselle Hewit, de la date cy-dessus mentionnée, parla d'une nourrice qu'on avoit trouvé à la moisson, et est écrite de Dammartin ; et par le contenu de cette lettre, il faut qu'ils ayent de quelques jours avant le 12 d'Août ; ainsi, en supposant qu'ils étoient arrivés à Dammartin environ le quatrième ou le cinquième d'Août, comme l'hôtesse de Dammartin a dit, qu'ils n'étoient demeurées chez la femme Michel qu'un mois, cela reculeroit la date de leur entrée chez elle, au moins, jusqu'au huitième Juillet ; mais s'il est vrai, comme la Demoiselle Hewit l'a déposé, que Monsieur et Madame Stewart ne soient restés à Paris, qu'environ trois semaines en tout, cela ne fixeroit leur départ de Paris environ au vingt-fixième Juillet. Dans ce cas, il ne faudroit pas même un séjour de trois semaines chez la femme Michel, pour reculer la date de leur entrée chez elle au huitième Juillet. Toutes ces circonstances ajoutent beaucoup de force à l'entrée qu'on trouve dans le livre de logeurs de l'hôtel d'Anjou ; ainsi, en faisant réflexion au tout ensemble, on ne peut pas douter, que Monsieur et Madame Stewart ne soient entrés à l'hôtel d'Anjou le huitième Juillet 1748, conformément à ce qui est porté sur le livre des logeurs de cet hôtel.

5. La seule chose qui reste à prouver, c'est que Madame Stewart n'est point accouchée chez la femme Michel pendant son séjour à l'hôtel d'Anjou. Ici les preuves semblent devoir être très fortes, et en grande nombre. Le nommé Michel, et sa femme assurent très positivement, qu'il n'y a point eu d'accouchement chez eux. La femme Blainville en est aussi très sûre, et la nourrice Favre a dit la même chose, si l'accouchement se fut fait à l'hôtel d'Anjou, un accouchement de deux jumeaux par une dame étrangère, et d'un âge avancé, eût été un fait assez remarquable pour rester dans la mémoire de ces personnes. Outre cela, il eût été sçu dans le voisinage. D'ailleurs les quatre personnes, ci-des-

fus mentionnées, auroient un occasion de voir l'accouchement, et les autres personnes, qui assistèrent à ces couches, auroient scû quelque chose de l'indisposition de Madame Stewart, en la suite de ses couches ; mais il y a encore d'autres circonstances qui empêchent d'amettre cette supposition. Michel sa femme, et la femme Blainville, se souviennent parfaitement, que peu de jours après l'arrivée de Monsieur et Madame Stewart à l'hôtel d'Anjou, ils y amenèrent, de la campagne, un enfant, et que cet enfant étoit alors agé de deux mois, au moins, lorsqu'elle fut arrêtée. De plus la femme Favre se rapelle, qu'elle luy avoit ouï-dire, que l'accouchement s'étoit fait à St. Germain. La circonstance de l'age de l'enfant suffiroit elle-même pour faire voir l'imposture ; car en supposant que l'enfant n'étoit agé que de trois semaines, au tems où il fut amené à l'hôtel d'Anjou, cela reculeroit l'époque de sa naissance, jusqu'au tems où Madame Stewart étoit à Reims, puisqu'elle n'en partit que le 2 Juillet, et que l'enfant ne fut amené à l'hôtel d'Anjou, que vers le milieu de ce mois. Mais il suffit ici de remarquer, que ce que Michel, Blainville, et Favre, se rappellent d'un enfant, qui fut amené à l'hôtel d'Anjou peu de jours après l'arrivée de Monsieur et Madame Stewart, fait voir suffisamment que l'accouchement ne s'est point fait dans cet hôtel, ce qui est encore confirmé, parceque Madame Stewart ne garda jamais le lit, pas même un jour, pendant tout le tems qu'elle resta à l'hôtel d'Anjou.

6. Si les observations précédentes sont justes, il s'ensuit nécessairement, que Madame Stewart n'est point accouchée du tout, puisque ce que vient d'être dit fait voir, qu'elle a demeurée à l'hôtel d'Anjou dans le mois de Juillet 1748 ; qu'elle y est entrée le 8 Juillet, et qu'elle n'est point accouchée ny avant, ny après son arrivée dans cet hôtel. Et cette conclusion est encore appuyée par la conduite mystérieuse que ces étrangers tinrent alors : leur entrée et leur séjour secret à l'hôtel d'Anjou ; les faux noms qu'ils y prirent ; les faux indices, qu'ils ont donné de l'endroit de leur demeure à Paris ; l'omission faite par le Chevalier Stewart de donner aucunes preuves sur les personnes à Paris, par rapport à l'accouchement ; l'ignorance étonnante de la Demoiselle Hewit sur les noms, sur les faits essentiels, en l'affirmation qu'elle a faite de quelques faits, dont la fausseté est à présent découverte. Toutes ces choses sont marqués au coin de l'imposture, et fortifient les preuves, ou les circonstances, qui servent à la mettre dans son jour.

Pour rendre la conviction de l'imposture complete, il semble, qu'il ne manque, à présent, que de trouver les véritables pere et mere de ces enfans ; leurs différentes nourrices, et le village où le cadet a été élevé pendant seize mois, ce qu'on a caché avec la plus grande soin ; il seroit encore à souhaiter, que l'on pût trouver la personne qui joua le rôle d'accoucheur, si tant est qu'il y en eût un, et de découvrir dans quel hôtel Mon-

seigneur

seigneur et Madame Stewart sont demeurés, pendant les quatre premiers jours de leur arrivée à Paris. Jusqu'icy l'on ignore ces choses, quoique l'on ait fait toutes les recherches possibles pour les découvrir ; mais celles, que l'on continue encore à faire, pourroit peut-être mener à la découverte de quelques unes de ces circonstances.

R E S U M E' du present M E M O I R E.

IL est question de la succession du Duc de Douglas pair d'Ecosse, décédé au mois de Juillet 1761 ; deux personnes prétendent avoir le droit de recueillir cette succession ; la première est le Duc d'Hamilton, le chef, et le plus proche héritier mâle de la maison de Douglas ; la seconde est le prétendu Archibald Stewart, en qualité de fils du Chevalier Jean Stewart et de Lady Jeanne Douglas, neveu, du côté de sa mère, du feu Duc de Douglas.

Pour prouver sa naissance, le prétendu Archibald Stewart a en sa faveur un extrait baptismal, et la possession : de plus, il s'est fait reconnaître, suivant qu'il est d'usage en Ecosse, par une jurée de quinze personnes, choisies pour décider du titre de sa naissance, comme fils du Chevalier Jean Stewart et de Lady Jeanne Douglas, et par conséquent, comme neveu du Duc de Douglas.

Le Duc d'Hamilton prétend, au contraire, qu'il résulte des faits rapportés dans le présent mémoire, qu'il n'est point le fils de Jean Stewart et de Lady Jeanne Douglas. Il présume, que ceux-ci voulans suppléer à ce que la nature leur avoit refusé, ont imaginé et exécuté le projet de se donner un fils, qui pût succéder aux biens du Duc de Douglas. Que, pour cet effet, ils se sont dérobés à leur patrie, leur famille, leurs amis, enfin à leurs domestiques, à fin de venir consommer leur imposture à Paris, à la faveur des ombres du mystère. Il trouve, qu'il est prouvé par les circonstances, et par les témoignages, que Lady Jeanne Douglas, la prétendue mère, n'est point accouchée au tems que l'on a donné pour l'époque de la naissance d'Archibald Stewart ; que, dès qu'il n'y a point eu d'accouchement, il ne peut y avoir eu de naissance ; que, par conséquent, le défaut d'accouchement détruit nécessairement la validité de l'extrait baptismal, et de la possession d'état, et avec d'autant plus de raison, que dans le cas présent, ny l'un ny l'autre des jumeaux, qu'on prétend être nés à Paris, en Juillet 1748, n'y a été baptisé ; que l'on avoit industrieusement évité le baptême de celui qui avoit été laissé à Paris, et que l'on a différé le baptême de l'autre de plus de deux mois après sa naissance ; et que ce baptême a été célébré dans une ville fort éloignée de Paris, où personne ne pouvoit rien sçavoir de relatif à l'accouchement ; aussi l'extrait baptismal de

de Reims ne fait-il aucune mention de l'âge de l'enfant baptisé, n'y l'endroit où il est né ; qu'un extrait baptistaire de cette sorte ne fait que prouver, que les pere et mere ont avoué un tel pour leur enfant, de sorte que la possession d'état, et l'extrait baptistaire, ne font que l'effet de la volonté des personnes, que vouloient supposer un enfant ; ce qui ramène l'affaire, dont il s'agit, à cette question ; Quelle force doivent avoir les affirmations et les autres démarches d'un mari et d'une femme, en faveur d'en enfant, qu'ils affirment être leur enfant, lorsqu'il y a des preuves qui démontrent, que la femme n'a pas accouchée ?

Si le baptême eut été célébré à Paris, où l'on pretend que l'accouchement s'est fait, un extrait baptistaire de cette ville eût mérité plus de consideration, puisque, dans ce cas, les faits, dont il s'agit, eussent été connus de ceux qui auroient présenté l'enfant au baptême ; mais que dans ce cas même un extrait baptistaire d'un enfant d'étrangers, qui n'avoient point de demeure fixé à Paris, n'auroit pas la même force que pour les Parisiens, ou pour une sujette de la France, qui n'auroit pas quitté son pays pour aller faire ses couches ailleurs. Un pareil extrait baptistaire est d'autant moins valide, qu'en Ecoffe cet acte n'a point la même force qu'en France, et que quoiqu'il soit joint même à la possession d'état, cela n'empêche pas que les juges en Ecoffe n'admettent les preuves du faux ; et malgré la présomption en faveur de celui qui jouit de la possession d'état, et qui est muni de l'extrait baptistaire, ces titres sont forcés de céder à la vérité, quand on démontre clairement une imposture.

Monsieur Stuart, tuteur du Duc d'Hamilton, demande donc au conseil consulté,

1. Si, selon les loix Romaines, qui sont en vigueur en Ecoffe, ainsi qu'en France, et si, selon les usages de la France, les preuves de la fausseté de l'accouchement, jointes aux autres circonstances, et à la déclaration des témoins rapportées dans le présent mémoire, feroient suffisantes pour détruire l'impression du dit extrait baptistaire, et de la possession d'état, de façon qu'Archibald Stewart fût déclaré un intrus dans la famille, et le Duc d'Hamilton fût en droit de recueillir la succession du Duc de Douglas ?

2. On demande, si une question, accompagnée de pareilles circonstances, se présentait à juger en France entre des regnicolles François, dans un parlement, ou juridiction, dont les témoins feroient fort éloignés, et si l'on avoit lieu de craindre, que par la mort de quelques uns de ces témoins, les preuves ne fussent perdues, avant d'avoir obtenu un jugement qui assura les dépositions des dits témoins, quelle précaution faudroit-il prendre pour conserver les preuves resultantes des déclarations de ces témoins, pour prévenir l'inconvénient de leur mort, jusqu'où

jusqu'où feroit-on en droit de les faire déposer juridiquement, en exécution d'un jugement qu'il ordonneroit ?

Enfin, les précautions, que l'on pourroit prendre à cet égard, ne seroient-elles point un obstacle pour la suite du procès, ou n'affoibliront-elles pas les dépositions des témoins ? pourroit-on, par exemple, se servir, par la suite, des dépositions faites devant un commissaire, ou devant Monsieur le Lieutenant de police ? ou, si ces dépositions n'auroient point de force, n'est ce pas que ces mêmes témoins pourroient être entendus en déposition de nouveau, au tems de l'enquête juridique, vû qu'il feroit assez singulier et facheux, si ces dépositions, faites à present, n'auroient point de force, et que, cependant, elles serviroient d'empêcher aucun examen de ces témoins cy-après ?

Cette affaire est trop délicate, et trop importante, pour que le tuteur du Duc d'Hamilton ne soit pas persuadé, que le conseil consulté n'apporte la plus grande attention pour l'entamer d'un façon sûre, et pour luy indiquer les précautions qu'il doit prendre, pour conserver, dans toute leur force, les preuves qu'il a pû découvrir, jusqu'à ce que la sentence, qui reconnoit Archibald Stewart pour fils du Chevalier Jean Stewart et de Lady Jeanne Douglas, soit attaquée, et jusqu'à ce qu'il intervienne une jugement en Ecosse, qui commette et autorise un magistrat pour faire une enquête juridique en France.

Il faudra, suivant les apparences, encore bien du tems avant que le procès, qui doit attaquer la dite sentence, soit assez avancé pour obtenir un jugement, en vertu du quel on puisse faire une enquête juridique ; puisque ce procès n'est pas encore commencé, et, outre les délais inévitables que peuvent causer les formes d'un pareil procès, il peut arriver que la party adverse essaye d'allonger le tems, en disputant, pied à pied, le terrain, vû qu'il sera de son intérêt de retarder l'enquête juridique le plus qu'il sera possible. Deux des témoins essentiels sont déjà morts depuis 1748 (c'est la fille et la servante de la femme Michel) et s'il arrivoit, qu'un ou deux des témoins, les plus importants qui restent, mourussent, avant que l'enquête juridique fût faite, ce contre-tems en traineroit la perte de la cause.

Si donc il est possible, sans préjudicier au témoignage de ces témoins, de trouver une manière de conserver, dans le cas de mort, quelque vestige, au moins, de ce que ces témoins auroient déposé sur l'enquête, l'on prie le conseil consulté, de l'indiquer, et de dire, si une espece d'enquête provisoire, faite en conséquence d'un ordre de ceux qui ont l'autorité dans le pays où les témoins demeurent, seroit une démarche convenable en pareille occasion ? si l'on croit, que les déclarations des témoins, faites en conséquence d'un tel ordre, même sans prêter serment, pourroient avoir quelque force en Ecosse ? et si, en prenant cette

route, on ne couroit point le risque d'affoiblir leur témoignage, parce qu'ils n'auroient pas été entendûs sur leur serment.

Dans des recherches, qui se font pour découvrir des faits, qu'on ne peut apprendre autrement, qu'en faisant des questions à ceux, qui ont seuls été à la portée de connoître la vérité ou la fausseté de ces faits, les déclarations de cette sort, devant un magistrat, sont assez fréquentes en Ecoffe ; on les appelle précognitions, et elles sont renduës quelquefois sans serment, et quelques fois aussy avec serment, selon les circonstances du cas ; et les dépositions des témoins, sans aucune enquête juridique, sont très communes en Angleterre, qui n'empêchent pas ces mêmes personnes d'être entenduës en déposition après, sur un enquête juridique. Quand ceux, qui ont donné de telles déclarations meurent, avantque de déposer juridiquement, on leur donne quelque espece de force, quoique beaucoup moins qu'aux dépositions juridiques ; mais les déclarations, ou dépositions de cette sorte, feroient encore très utiles dans le cas, dont il s'agit, vû qu'étant envoyées en Ecoffe, elle donneroient beaucoup plus de facilité d'expédition au procès qui va être entamé, à fin de faire révoquer la sentence qui a reconnu Archibald Stewart pour véritable fils du Chevalier Stewart et de Lady Jeanne Douglas : par leur moyen on pourroit se flatter d'obtenir plus promptement un jugement, qui commette en France un magistrat, pour faire une enquête juridique.

Les risques de l'un et de l'autre côté, sont icy présentées aux conseils consultés, à fin qu'ils indiquent à Monsieur Stuart, tuteur du Duc d'Hamilton, la conduite la plus sûre dans des circonstances si délicates.

N U M B E R X.

The other MEMOIRE à consulter, is introduced in this manner :

Decemb. 10.
1762.

LE Duc de Douglas pair d'Ecoffe, est décédé sans enfans en Ecoffe, au mois de Juillet 1761, et sa succession fait naître une contestation importante, qui est l'objet de ce mémoire.

Le Duc d'Hamilton premier pair d'Ecoffe, actuellement mineur, qui est chef de la maison de Douglas, et qui doit en réunir les titres et les honneurs, et le Chevalier Hugues Dalrymple de Northberwick, membre du parlement d'Angleterre, prétendent, que cette succession leur est devolue, mais elle leur est contestée par Archibald-Jacques-Edouart Stewart,

Stewart, qui se dit neveu du Duc de Douglas, et son hérétier le plus prochain.

Ce réclamant prétend être né du mariage de Lady Jeanne Douglas, sœur du Duc de Douglas avec le Chevalier Jean Stewart; comme il a été obligé de prouver sa filiation, suivant les formes pratiquées en Ecosse, il a produit des pièces, et fait entendre des témoins, dans une instruction, connue en Ecosse sous le titre de *Service de juré*, &c.

After giving a short account of the marriage, journey, and arrival at Reims, Mr. Stuart says : On suppose qu'alors Lady Jeanne Douglas, se trouvant enceinte, et prête d'accoucher partit de Reims, par le carrosse de voiture, &c.

The following facts are said to have been discovered by Mr. Stuart :

1. Que pendant le séjour que Lady Jeanne Douglas a fait à Reims, depuis la my-juin, jusqu'au commencement de Juillet, chez la Dame Hibert, rue du Bourg, avec la Demoiselle Hewit, et deux femmes de chambre, elle feignit à la vérité un grosesse, mais que les personnes, qui la virent alors, ne pouvoient présumer, par toutes les marques extérieurs, propres à l'indiquer, qu'elle fut aussi avancée qu'elle auroit dû être, suivant l'époque de son prétendu accouchement; qui n'auroit été alors éloigné que de quelques jours.

2. Que le Chevalier Stewart, Lady Jeanne Douglas sa femme, et la Demoiselle Hewit, partirent de Reims le 2 Juillet 1748, par le carrosse de voiture, (où ils avoient retenu trois places, ayant laissé les deux femmes de chambre à Reims) et durent arriver à Paris le 4 Juillet, vraisemblablement à l'hôtel de Chalons, rue St. Martin, où descendent frequemment les voyageurs de la carosse.

3. Que le 8 du même mois de Juillet 1748, le Chevalier Stewart, Lady Jeanne Douglas, et la Demoiselle Hewit, vinrent loger avec un extérieur de mystère à l'hôtel d'Anjou, rue Serpente, chez le nommé Michel, perruquier, Lady Jeanne Douglas n'ayant alors aucune apparence, ny de grosesse, ny d'accouchement, et que leur entrée dans cette hôtel est prouvé par le registre de l'inspecteur de police, qui porte ces mots, *M. Fluralt Ecossois et sa famille, entré le 8 Juillet 1748*, mots qu'on a lieu de croire avoir été écrits de la propre main du Chevalier Stewart.

4. Qu'ils ont été vus habituellement, pendant le séjour qu'ils ont fait dans cet hôtel, par Michel et sa femme, actuellement vivants; leur fille et leur servante, qui sont depuis décédés; la nommée Blainville, logée dans le même hôtel, et par le nommé Breval, perruquier, gendre de Michel, qui sont vivants.

5. Que:

5. Que tous ces témoins doivent être en état de déposer, par toutes fortes de circonstances, qu'il est impossible que Lady Jeanne Douglas ait accouchée, pendant tout le tems qu'elle a été dans cette hôtel; mais, qu'au contraire, quelques jours après qu'elle y fut entrée, elle s'absenta, avec son mari, et la Demoiselle Hewit, comme pour aller à la campagne un jour ou deux; et qu'ils revinrent avec un enfant, qui parut, aux personnes de l'hôtel, agé de plusieurs semaines, et même de quelques mois.

6. Que cet enfant, étant accompagné d'une nourrice, que le Chevalier Stewart dit avoir été prise au hazard dans la rue, et qui n'avoit point de lait, il luy fut indiqué par la Dame Michel, une autre nourrice, demeurant dans le voisinage, appelée Favre, qui étoit femme d'un menuisier, et qui se chargea de l'enfant.

7. Que le Chevalier Stewart et Lady Jeanne Douglas en présentant cet enfant comme leur fils, n'ont jamais déclaré, ny à Michel, ny à sa femme, ny à la femme Blainville, qu'ils eussent un autre enfant jumeau; qu'on n'a jamais vû paroître, dans cet hôtel, pour Lady Jeanne Douglas, aucun accoucheur, ni medecin, ny ce prétendu jumeau puisné; et qu'elle n'y a même jamais été rétenue au lit par aucune maladie ou incommodité.

8. Qu'après quelques semaines de séjour dans cet hôtel, le Chevalier Stewart, Lady Jeanne Douglas, sa femme, et la Demoiselle Hewit, la Favre et son enfant, et l'enfant prétendu de Lady Jeanne Douglas, partirent de l'hôtel d'Anjou en carosse, et se rendirent tous au village de Dammartin, près Paris, dans une Auberge, tenu par le cousin de la femme Favre, où ils restèrent quelque tems; où l'enfant de la nourrice mourut, et fut inhumé le 9 Aoust 1748; et où Lady Jeanne Douglas fut vüe se promenant, n'ayant aucune marque d'un accouchement récent.

9. Qu'ayant pris le party de retourner à Reims, où la femme Favre n'avoit pû s'engager de les accompagner, ils trouvèrent à Dammartin une femme de la campagne, qui y étoit venue, avec son mary, pour la moisson, et qui avoit un enfant qu'elle allaitoit, laquelle ils engagèrent de les suivre, avec son mari, pour continuer à nourrir l'enfant à Reims, où ils se rendirent tous.

10. Qu'étant arrivés à Reims, ils y firent baptiser le réclamant le 22 Septembre 1748, avec beaucoup d'appareil, mais qu'aucunes des personnes, qui se trouvèrent au baptême, n'avoient été à Paris lors du prétendu accouchement.

11. Que pendant ce second séjour à Reims, qui a été de seize mois, Lady Jeanne Douglas, pour donner plus d'apparence à son accouchement supposé, feignit une seconde grossesse, et ensuite une fausse couche; mais que le Chevalier Stewart, son mari, convient, que c'étoit,

au

au contraire, l'indisposition qui arrive aux femmes, lorsqu'elles cessent d'être en âge d'avoir des enfans,

12. Que, vers la fin de ce même séjour à Reims, le Chevalier Stewart, Lady Jeanne Douglas, et la Demoiselle Hewit, leur perpetuelle confidente, revint à Paris, sus pretexte de prendre le prétendu jumeau puisné, qu'ils suposoient avoir confié aux soins du prétendu Pierre la Marre, accoucheur, et l'ammenèrent à Reims, où on remarqua, qu'il ne ressembloit aucunement au prétendu aîné; celui-cy étant robuste, brun, et ayant les yeux noirs; et l'autre foible, blond, et ayant les yeux bleus.

13. Enfin, qu'il n'existoit, à l'époque du prétendu accouchement, aucun aubergiste au Fauxbourg St. Germain, du nom de la Dame le Brun; que Pierre la Marre, designé accoucheur, et prétendu auteur des lettres jointes à l'acte de juré, est un personnage également imaginaire; et qu'il n'y a sur les registres des paroisses du Fauxbourg St. Germain, aucun acte de l'ondoyment, qu'on luy attribue, de l'enfant puisné.

Tels sont les faits que l'on a découvert, tant à Paris qu'à Dammartin, et à Reims, et dont on espere de pouvoir faire la preuve. Dans ces circonstances le tuteur du Duc d'Hamilton et le Chevalier Dalrymple ont recours aux lumières du conseil, pour se determiner sur le party qu'ils ont à prendre, et sur les formes qu'il doivent observer, dans la poursuite d'un affaire aussi importante.

Le conseil sous signé, qui a examiné le mémoire cy-dessus, et qui a vû une traduction de service de juré fait à Edimbourg, au sujet de la reconnoissance d'Archibald-Jacques-Edouart Stewart, en qualité de fils du Chevalier Jean Stewart, et de Lady Jeanne Douglas; un extrait baptismal, tiré de registres de la paroisse de St. Jacques de la ville de Reims, du 22 Septembre 1748; et les autres pieces enoncés dans le mémoire;

Consulté sur la question, de sçavoir, Si le tuteur du Duc d'Hamilton et le Chevalier Dalrymple, qui prétendent être hérétiers du Duc de Douglas, décédé en Ecoffe au mois de Juillet 1761, peuvent soutenir, que le prétendu Archibald-Jacques-Edouart Stewart n'est point fils du Chevalier Jean Stewart et de Lady Jeanne Douglas, sa femme, ny consequemment neveu du Duc de Douglas, et par quelle voye, ils doivent se pourvoir, pour en acquerir une preuve juridique et authentique;

Est d'avis, que les reflections, qui se presentent sur une question aussi digne d'attention, consistent à examiner, d'un côté, la nature et le degré des preuves, que le tuteur du Duc d'Hamilton et le Chevalier Dalrymple rapportent, ou se flattent de se procurer; et d'un autre, les

regles de l'ordre judiciaire, qui doivent déterminer la forme de leur poursuite.

Au fond, il s'agit de prouver, que le prétendu Archibald-Jacques-Edouart Stewart n'est point fils du Chevalier Jean Stewart, et de Lady Jeanne Douglas sa femme ; que c'est un enfant supposé ; et que la grossesse de Lady Jeanne Douglas, et son prétendu accouchement de deux jumeaux, ne sont que des impostures. C'est donc une accusation en supposition de part qu'il s'agit d'intenter ; crime grave ! qui donnera lieu, s'il est prouvé, à des peines afflictives contre ceux qui en sont les auteurs ; et c'est pour cette raison même, qu'on doit apporter à cette affaire la plus scrupuleuse attention, avant que d'en entreprendre la poursuite ; mais lorsqu'on réfléchit sur les faits exposés dans le mémoire, qu'on en rassemble les circonstances et les rapports, on ne peut douter, que si les hérétiers du Duc de Douglas parviennent à la preuve qu'ils annoncent, il n'en résulte une pleine conviction de la supposition de part.

Pour mettre quelque ordre dans les observations, qui se présentent en foule à la vue, d'un événement aussi extraordinaire, il faut d'abord distinguer tout ce qu'y est, dès à présent, prouvé par les pièces, indiquées dans le mémoire, d'avec ce qui ne peut l'être que par le moyen de l'instruction, qu'il s'agit d'entreprendre ; parceque ce sont les faits déjà établis, qui doivent déterminer à s'engager dans la preuve des autres.

A l'égard des faits qui sont déjà prouvé, on ne doit pas perdre de vue, que lorsque ce prétendu Archibald s'est présenté, pour recueillir la succession du Duc de Douglas, se trouvant obligé de prouver sa filiation, il a prétendu faire cette preuve par le service de juré, dans la forme pratiquée en Ecosse ; c'est cette instruction qu'il s'agit d'examiner d'abord, sur les seuls actes qui sont actuellement représentés.

Ce premier point de vue donne lieu aux réflexions qu'on va développer :

I. Si on envisage, selon les véritables principes de la matière, la preuve rapportée en Ecosse par le réclamant, pour établir son état, on reconnoît, sans peine, qu'elle pèche par des vices essentielles, qui en énervent toute l'autorité.

Les sous signés ignorent, s'il y a des loix particuliers en Ecosse, qui soient différent des regles qui s'observent en France, dans cette intéressante matière, mais voici celles qui sont consacrés par la jurisprudence Française ; comme elles ont leur fondement dans le droit naturel, et dans le droit Romain, qui est la raison écrite, il n'y a pas lieu de croire que le droit Britannique, ou Ecossois, établisse rien du contraire.

L'état des hommes est de toutes les matières de droit le plus important, puisque son objet d'assigner, et d'assurer à chaque citoyen la place

place qu'il doit occuper dans sa famille, et dans la société, mais c'est en même tems celle qui est environnée de plus d'obscurité. La conception est un mystère sur lequel on ne peut se procurer des preuves absolument évidentes. La naissance, l'identité des personnes, sont des faits, dans la discussion desquels l'imposture peut quelques fois se revêtir des apparences de la vérité ; il est cependant nécessaire de se déterminer ; et la justice, dans ces contestations épineuses, est obligée de marcher à la lueur des simples présomptions, que luy tiennent lieu de preuves, parcequ'on ne peut pas en avoir de plus parfaites.

Ainsy, ce qu'on appelle preuves, en matières d'état, ne sont, en foy, que des présomptions ; mais la loy les admet, et les consacre, en telle sorte qu'elles deviennent la base des jugemens ; et c'est à l'ombre de ces présomptions salutaires que tous les citoyens jouissent de leur état, et que les familles sont garanties des troubles, que le plus grand de tous les intérêts pourroit exiter.

Ces preuves sont de deux especes ; l'une est la possession d'état, l'autre résulte de l'autorité des régîtres publics ; c'est du concours de l'existence, ou de la contrariété de ces deux sortes de preuves, que sentent les principes qui servent à décider toutes les questions d'état.

La possession d'état se sent mieux qu'on ne peut l'exprimer : c'est cette espece de notoriété, et de reconnoissance publique, qui se forme, par les relations de tous les membres qui composent une famille et une société ; la source de cette notoriété est dans la publicité d'un accouchement, par lequel une femme, unie à son mary par un mariage légitime, luy donne un fils, qui devient, à l'instant, membre de deux familles, et participe à tous les avantages de l'état de ses pere et mere.

La tradition s'en perpetue pendant tout le tems de l'existence d'un citoyen ; c'est une chaine qui embrasse, sans aucune interruption, tous les instans de la vie ; qui se soutient par les reconnoissances réciproques de tous ceux qui composent une famille ; et qui unit même toutes les familles entre elles, en les distinguant, et en assignant à chacun la place, qu'il doit tenir dans la société.

La possession est la plus ancienne des preuves de l'état, parcequ'elle est fondée sur le droit naturel, qui existoit avant qu'on ait fait aucune loy sur cette matière, ainsy elle doit avoir son autorité dans tout gouvernement policé.

Mais pour ne pas prendre le change sur ce genre de preuve, il est essentiel de considerer avec attention, quels sont les caractères qui distinguent la véritable possession d'état, d'avec celle qui n'en auroit que de fausses apparences.

La principale condition, requisé pour la rendre parfaite, est, sans doute, qu'elle remonte jusqu'au moment de l'accouchement, et de la naissance.

Eu effet, comment se forme le genre précieux de cette possession : une femme accouche dans la maison de son mary, où sont les témoins de sa grossesse ; les parens, les domestiques, les voisins, en sont instruits ; cette reconnoissance s'étend ; sa publicité accroit de jour en jour ; c'est une lumière qui éclaire le moment de la naissance, qui brille sur le front de l'enfant, qui ne le quitte plus, qui le fait distinguer et reconnoître par tout.

Mais si de cette tradition successive, on rétranche le commencement, c'est en sapper la base et le principe ; si les premières personnes, aux quelles l'enfant est présenté, comme un tel individu, n'en ont pas acquis la connoissance par d'autres personnes, qui ayent été témoins immédiates de la naissance ; si cette notoriété ne remonte pas au moment de l'accouchement ; si cet accouchement même n'a pas été connu dans le principe ; si enfin le fil est rompû par l'endroit même qui tient de plus près à la naissance, il ne peut plus y avoir de véritables possessions d'étât ; puisque, dans un fait continu, tout doit se tenir et remonter jusqu'à son principe.

A l'égard de l'acte de baptême, c'est une preuve que la loy civile a ajoutée à la possession d'étât ; le ministre de l'église, qui administre le sacrement, est en même tems celui de la loy ; mais comme il ne parle que sur le rapport des personnes qui ont présenté l'enfant au baptême, cet acte n'a de poid qu'autant qu'elles sont elles-mêmes bien instruites, et dignes de foy ; ainſy, si l'enfant, au moment de sa naissance, est porté de la maison, où la mere est accouchée, à la eglise, et présenté au baptême par des parens, ou des amis, l'acte de baptême est alors un titre infragable, qui fortifie la possession d'étât, et qui en est luy-même le monument le plus éclatant ; mais, si l'enfant n'est pas présenté au baptême, dans le lieu même où il est né ; si les personnes, qui y assistent, ont été éloignées de ce lieu ; s'ils ne peuvent en avoir une connoissance personnelle et immédiate ; et si, enfin, la loy, qui a établi les registres publics, pour faire principalement la preuve de l'age, est méprisée, au point de ne pas même déclarer, dans l'acte de baptême, le lieu, ny le tems de la naissance ; on peut dire qu'un tel acte de baptême n'est pas une titre.

Or, c'est le vice essentiel, qui se rencontre dans l'acte de baptême, tiré des registres de Reims, et ce vice est commun à la possession articulée par le prétendu Archibald Stewart ; puisque, si on excepte les prétendus pere et mere, et la Demoiselle Hewit, leur confidente, l'acte de baptême, ny l'enquête faite en Ecosse, n'indiquent personnes qui aient été témoin du prétendu accouchement, ny même qui aient été à Paris au tems au quel on le rapporte.

La conséquence, qu'on doit tirer de cette première réflexion, c'est qu'on ne doit pas mettre le prétendu Archibald Stuart dans la classe de
tous

tous ceux, qui, appuyés sur une possession d'état, sans nuage, et sur un acte de baptême régulier, peuvent s'en faire des barrières pour se maintenir dans leur état ; sa possession, et son acte baptistaire, sont d'une qualité fort inférieure ; et c'est le cas, sans doute, d'examiner de plus près les circonstances, qui environnent des titres aussi équivoques.

2. Ces circonstances sont si extraordinaires, si contraires à toute vray-semblance, et même si irréconciliables entre elles, qu'on ne peut se défendre, à la première inspection, des soupçons les plus véhéments. Lady Jeanne Douglas épousa, à l'âge de 47 à 48 ans, le Colonel Jean Stewart, sans l'agrément du Duc de Douglas, son frère, qui, depuis ce tems-là, a refusé de la voir ; ce mariage est à peine contracté à Edimbourg, que le mary et la femme quittent leur patrie, pour aller mener une vie errante en Angleterre, en Hollande, en Allemagne, et en France ; si une grossesse se fut manifestée, la conservation de la mere et de l'enfant auroit été un motif suffisant de se fixer dans quelque endroit ; et l'espérance, que la naissance d'un fils seroit un gage de réconciliation avec sa famille, en auroit été un autre également pressant de se rapprocher de leur patrie ; mais le mary et la femme ne font, au contraire, que s'en éloigner d'avantage.

Plus le moment heureux de l'accouchement approche, et plus on s'écarte des précautions les plus ordinaires. Ils étoient à Reims avec leur domestiques ; ils en partent, pour venir à Paris, avec une seule confidente, et Lady Jeanne Douglas s'expose, à la veille d'accoucher, aux incommodités d'une carosse de voiture.

Venoient-ils chercher dans cette capitale les secours des plus habiles chirurgiens-accoucheurs ? Non ! On prétend avoir employé un chirurgien inconnu, appelé Pierre La Marre ; pourquoi-donc vient-on à Paris dans un moment si périlleux ? N'étoit ce pas parceque cette grande ville est le lieu le plus propre à commettre un supposition de part, par la facilité d'y trouver des enfans abandonnés, et d'enfvelir une intrigue de cette espece ?

Si Lady Jeanne Douglas, qui dans ses lettres affectoit les sentimens de la plus haute piété, étoit effectivement accouchée à Paris de deux enfans, on se seroit empressé de les faire endoyer ou baptiser, et on auroit facilement trouvé à Paris des Ecoissois, qui auroient été témoins de cette cérémonie ; mais on a vuë, que l'aîné n'a été ny baptisé ny ondoïé à Paris ; on suppose que le cadet a été ondoïé par l'accoucheur, mais si cela étoit, cet accoucheur en auroit fait dresser un acte sur les régitres de la paroisse, ainsi que cela est ordonné par la declaration de 1736, et cet acte seroit rapporté.

Quelle est cette affectation d'avoir séparé ces deux enfans presqu'au moment de leur naissance ? d'en avoir abandonné un aux soins d'un

prétendu accoucheur, qui n'existe pas, et d'avoir amené l'autre, trois semaines après, dans un village, qu'on n'a jamais osé nommer?

N'est ce pas encore une plus grande singularité d'avoir affecté de faire faire à Reims une baptême solennel de l'aîné de ces jumeaux, et d'y avoir fait paroître plusieurs personnes, dont aucun n'avoit été à Paris dans le tems de l'accouchement, et ne pouvoit conséquemment en avoir une connoissance immédiate?

Enfin, que peut-on penser d'un acte de baptême, dans lequel, au mépris de toutes les ordonnances du royaume, on n'a fait mention ny du lieu, ny du jour, ny du mois, ny de l'année de la naissance? Est ce ainſy que Chevalier Stewart et Lady Jeanne Douglas se feroient comportés, si la grossesse et l'accouchement eussent été véritables, et que leurs vœux eussent été comblé par la naissance de deux enfans mâles, destinés à être les hérétiers du Duc de Douglas?

Independemment de tous ces défauts de vrai-semblance, on remarque diverses contradictions entre les pieces et les dépositions, et dans les dépositions entre elles.

Par exemple, on y parle par tout de Pierre La Marre, accoucheur, et cependant la Comtesse de Wigtoun, une des témoins qui ont été entendûs, et qui étoit à Reims en 1748, a déposé, qu'elle y avoit ouï-dire, que le cadet des deux enfans avoit été baptisé par une sage-femme.

On fixe l'accouchement au dix Juillet 1748, et cependant ce même jour le Chevalier Stewart écrit une lettre, et la Demoiselle Hewit en écrit une autre le lendemain, dans lesquelles, ny l'un ny l'autre ne parle d'un événement si important; et en vain, pour pallier une variation ſy choquante, le Chevalier Stewart, dans une lettre du fixième d'Août 1748, suppose-t-il, que sa femme n'étoit accouchée que le dixième au soir; et la Demoiselle Hewit dans une de deux Juillet, allégue-t-elle, de son côté, qu'elle s'est trompée, en dattant sa lettre du onzième au lieu du dixième: ce ressouvenir, douze jours après, dans une lettre écrit à un domestique, choque toute-vray-semblance, et répand un nouveau nuage sur le fait de la naissance dans sa principale circonstance.

Enfin la Demoiselle Hewit, seule confidente de tout ce qui s'étoit passé, n'est pas d'accord avec elle-même.

Elle a déposé, dans un tems, que le fils aîné, avant d'avoir eû la nourrice qui a été conduite à Reims, avoit eû deux ou trois autres nourrices, qu'on avoit été obligé de renvoyer, parcequ'elles avoient du mauvais lait; et elle a écrit, dans autre tems, que ces mêmes nourrices avoient été au nombre de cinq, et qu'elles n'avoient été renvoyées que parcequ'on n'avoit pas pû les engager à aller à Reims. Le Chevalier Stewart, de son côté, a écrit, dans une lettre de fixième d'Août 1748, que ce même enfant avoit alors une bonne nourrice, après en avoir changé trois.

On voit, par ces simples observations, que la vérité, comme la vray-semblance, est blessée dans l'exposé du réclamant ; et dès là, ces ne sont plus des simple soupçons, c'est déjà une première preuve de fausseté.

3. Mais plusieurs faits, indicatifs de la supposition de part, sont déjà constatés ; il est essentiel de les rassembler icy.

L'on a exposé, que Lady Jeanne Douglas étoit accouchée le dixième Juillet 1748, de deux enfans mâles, dans la maison de la Dame Le Brun, aubergiste, dans le Fauxbourg St. Germain, par la ministère de Pierre La Marre, accoucheur, qui avoit ondoyé, sur le champ, le puisné, à cause de la foiblesse. Il n'est plus permis de varier sur ces faits essentiels, puisque c'est ce qui résulte positivement de l'enquête de juré, et du projet de testament de Lady Jeanne Douglas, rapporté par l'écrivain d'Edimbourg ; c'est un système devenu indivisible, et qui doit être généralement vray ou faux, dans toutes ses circonstances essentielles.

Or, on aura la preuve, tiré de registres de la police, qu'il ny avoit point en 1748 de Dame Le Brun, qui tint ny auberge ny hôtel garny dans le Fauxbourg St. Germain ; voilà déjà une supposition qui porte sur le lieu même, sur la maison où l'on prétend que Lady Jeanne est accouchée.

On a la preuve qu'il n'y a point eû de Pierre La Marre, qui ait pu être l'accoucheur de Lady Jeanne Douglas ; et c'est ici où la fausseté paroît de la manière la plus odieuse ; le réclamant a rapporté quatre lettres prétendues, écrites par ce Pierre La Marre au Chevalier Stewart ; mais elles sont conçues dans une stile, qui, soit pour la grammaire, soit pour l'orthographe, prouve, que ce ne peut être l'ouvrage ny d'un François, qui sache bien la langue, ny d'une personne du peuple, qui la sache mal ; mais, dans le tour et l'idiome, on reconnoît sensiblement l'Anglicisme.

Il y a plus dans le dépouillement des registres du college des chirurgiens ; il sera prouvé qu'il n'y a point eû de maître en chirurgie de ce nom ; il y a eû seulement un Louis-Pierre La Marre, privilégié obscur, mais qui ne peut pas être le Pierre La Marre, qui auroit accouchée Lady Jeanne Douglas, puisqu'on fait dire à celui-ci, dans une de ses lettres qu'il a été faire un long voyage en Italie, et que Louis-Pierre La Marre, tant qu'il a vecû, ne s'est point absenté de Paris.

On a enfin la preuve, par des extraits de livres des registres de toutes les paroisses du Fauxbourg St. Germain, que dans tout le mois de Juillet 1748 (le prétendu accouchement est du dixième) il n'y a point eû de Sholto Stewart (c'est le nom qu'on donne au jumeau puisné) baptisé, ny ondoyé : cependant la declaration de 1736 oblige les accoucheurs, et les sages-femmes, de faire dresser un acte des ondoyements qu'ils feront.

Peut-on

Peut-on présumer, de la part d'un accoucheur de Paris, une contravention à une loi si positive ? D'ailleurs, si Pierre La Marre est luy-même une personne imaginaire, ainsi que ses prétendues lettres, cet ondoyement, qu'on luy attribue, ne put être véritable ; ce jumeau puîné ne peut luy avoir été confié ; si ce puîné existoit encore, quel jugement pourroit-on porter sur son état ? où seroit la preuve, qui pourroit faire remonter sa possession jusqu'à sa naissance ? balanceroit-on à proscrire sa réclamation ? or, c'est icy un fait indivisible ; car dès qu'on suppose un accouchement de deux enfans, l'aîné ne peut pas être reconnu si le puîné n'a pas existé ; et tout ce qu'on peut en penser, c'est qu'on a supposé un accouchement de deux jumeaux, pour mieux s'assurer, par l'un au défaut de l'autre, le fruit de cette manœuvre : mais il est arrivé par un événement tout contraire, que la supposition de l'un, qui est manifeste, fortifie la preuve de la supposition de l'autre.

Ces réflexions sur les principes de la matière, et sur les circonstances du fait, sont si pressantes, que quand les hérétiques du Duc de Douglas n'auroient point découvert d'autres preuves de supposition de part, il y auroit lieu de penser, qu'ils seroient bien fondés à contester au prétendu Archibald Stewart l'état qu'il réclame, puisqu'on luy diroit, que la possession, et l'acte baptismal, qu'il invoque, n'ont point les caractères propres à former des titres, et à fixer la confiance ; on luy objecteroit, que les faits, qui, selon luy, ont précédé, accompagné, et suivi sa prétendue naissance, blessent toute vray-semblance, et sont absolument incroyables : enfin, on luy prouveroit la fausseté des principales circonstances de son exposé ; mais les nouvelles découvertes que les hérétiques du Duc de Douglas ont fait à Paris, à Dammartin, et à Reims, sont si décisives, que s'ils parviennent à les prouver, on ne doit pas douter, qu'il n'en résulte une entière conviction du crime de supposition de part.

C'est icy le moment d'envisager les faits articulés dans le mémoire, et dont la preuve dépend de l'instruction qui est à faire.

On ne doit jamais oublier, que c'est à Paris, que c'est le 10 Juillet 1748, que l'on suppose, que Lady Jeanne Douglas est accouchée de deux enfans mâles ; mais si l'on démontre, qu'alors elle étoit, en effet, à Paris, et qu'il est impossible, qu'elle y soit accouchée, cette proposition négative, bien établie, ne prouverat-elle pas la supposition de part ? or, c'est le résultat nécessaire de tous les faits articulés dans le mémoire à consulter.

Pendant le premier séjour de Lady Jeanne Douglas à Reims, au mois de Juin 1748, on voit une simulation de grossesse, mais si mal concertée, qu'il sera prouvé (dit on) que cette grossesse ne paroïssoit point assez avancée, pour annoncer un accouchement prochain.

Le 2 Juillet 1748 elle part, avec son mary, et la Demoiselle Hewit, leur confidente, par le carosse de voiture ; le registre du bureau du carosse en contient la preuve ; et ils ont dû arriver à Paris le 4 Juillet.

Qu'ont-ils fait dans les premiers jours de leur résidence à Paris ? cela ne paroît pas encore éclairci ; mais le 8 Juillet, ils sont entrées à l'hôtel d'Anjou, rue Serpente, chez le nommé Michel, aubergiste ; ils y déguisèrent leurs noms ; le registre de l'inspecteur porte, *M. Fleuralt, Ecoffois, et sa famille, entré le 8 Juillet 1748.*

Si ce déguisement de noms rend la preuve de l'identité des personnes plus difficiles, il faut convenir, que c'est une nouvel indice de supposition, si l'identité se trouve d'ailleurs suffisamment prouvée ; puisqu'on ne peut déguiser son nom, que dans la vue d'un manœuvre criminelle ; et qu'on ne croira jamais, que Lady Jeanne Douglas ait voulu se cacher, pour mettre au monde un enfant, qui devoit combler ses vœux, et dont la naissance ne pouvoit être trop notaire, et trop publique.

Il ne s'agit donc, que de se fixer à la datte du 8 Juillet, époque de leur entrée dans l'hôtel d'Anjou ; et de voir, si, d'un côté, ces sont véritablement Lady Jeanne Douglas, son mary, et la Demoiselle Hewit, qui ont logé à l'hôtel d'Anjou ; et si elle a pu y accoucher le dix Juillet.

Or, ces deux points essentiels seront pleinement éclaircis, si l'on parvient à la preuve des faits exposés dans le mémoire.

Quant à l'identité des personnes, le voile, que le déguisement de nom auroit pu jeter, fera bien-tôt levé par les dépositions suivies des personnes, qui les ont vû successivement à Paris, à Dammartin, et à Reims. La nourrice les a suivis de Paris à Dammartin ; elle les a vû partir de Dammartin, pour aller à Reims avec une autre nourrice, qu'ils avoient pris à son refus ; et on les a vû arriver de Dammartin à Reims : les lettres mêmes, et les dépositions de l'enquête, fait à Edimbourg, d'accord avec les témoins qui seront entendûs, indiqueront la route que le Chevalier Stewart et sa femme ont tenuë, et montreront les traces de leur pas ; arrivés à Reims, il n'y a plus de doute sur l'identité, qui ne peut ainsi manquer d'être démontré.

A l'égard de l'impossibilité, que Lady Jeanne Douglas soit accouchée à Paris le 10 Juillet, une infinité de circonstances peuvent l'établir : ceux qu'ils fréquentoient dans l'hôtel d'Anjou, rue Serpente, diront sans doute, qu'elle n'étoit point grosse, ni prête d'accoucher lorsqu'elle y arriva, et qu'elle s'y est bien portée, lorsqu'elle sortoit quelques fois ; qu'elle n'a pas gardé le lit un seul jour ; qu'ils n'y ont vû venir aucun accoucheur, ny medecin ; qu'en un mot il ne s'y est rien passé de ce qui indique un accouchement.

On retrouvera même, dans ce qui s'est passé à l'hôtel d'Anjou, à peu près, les mêmes personages, que le réclamant transporte dans la maison

de la Dame le Brun ; une hôtesse (c'est la Dame Michel), sa fille, une voisine (c'est la femme Blainville) ; en sorte que c'est une fable tissée sur un canevas, dont on a corrompû tous les traits. Il y a plus ; ces témoins diront, que quelques jours après l'arrivée de Lady Jeanne Douglas à l'hôtel d'Anjou, ils sont vûs s'absentir, avec son mary, et la Demoiselle Hewit, un jour ou deux, et révenir ensuite, ammenant un enfant, dont on disoit qu'elle étoit la mere ; et que cet enfant paroissoit avoir un mois, six semaines, ou deux mois : voilà le premier instant où l'enfant supposé a parû ; moment absolument décisif ! car si l'enfant avoit, au moins, un mois, il ne pouvoit pas être né à Paris de Lady Jeanne Douglas, puisqu'elle n'y étoit arrivée que depuis quelques jours ; et elle ne pouvoit pas non plus l'avoir mis au monde à Reims, puisque l'on ne prétend pas, qu'elle y soit accouchée, ce que le système du réclamant est, au contraire, qu'elle en est partie grosse le 2 Juillet, huit jours seulement avant le prétendu accouchement.

C'est ainfi que l'on établira, sans peine, l'impossibilité absolue d'un accouchement, soit à Paris, soit à Reims, et conséquemment la supposition de part.

On découvrira, sans doute, tant à Paris, qu'à Dammartin, et à Reims, beaucoup d'autres circonstances accessoires, qui dévoileront, de plus en plus, la vérité : on sçaura peut-être, où le Chevalier Stewart et sa femme, ont demeuré à Paris, depuis le quatrième Juillet, jour de leur arrivée, jusqu'au huitième, qu'ils sont entrés à l'hôtel d'Anjou, et ce qui s'est passé pendant ces quatre jours : on prouvera, que jamais, pendant le séjour de Lady Jeanne Douglas à l'hôtel d'Anjou, on y a présenté le prétendu jumeau puîné, ny parlé de son existence ; mais ce n'est qu'à la fin de l'année 1749, que les prétendus pere et mere firent un second voyage de Reims à Paris, pour le conduire à Reims : en sorte que ce prétendu jumeau puîné n'a été produit, et montré, qu'à quinze ou seize mois après l'aîné ; celui-la à Paris, et celui-ci à Reims : qu'aussi remarque-t-on, que l'un étoit robuste, avoit le teint brun, et les yeux noirs ; et l'autre étoit foible, avoit le teint blanc, et les yeux bleus ; ce qui joint à la preuve, que Pierre La Marre, qu'on suppose avoir pris soin du jumeau puîné, n'est qu'un personnage imaginaire, exclut toute relation de fraternité entre ces jumeaux, et conséquemment toute possibilité de la filiation, qu'on leur attribue : on pourra découvrir, enfin, que la fausse couche, que l'on prétend, que Lady Jeanne Douglas eut, après son retour à Reims, n'est encore qu'une supposition imaginée, pour réparer le défaut de vrai-semblance, que Lady Jeanne Douglas, à l'âge, où elle étoit parvenue, fut accouchée quelques mois auparavant. La fausseté de tant de précautions accumulées, étant averée, fournira encore des nouvelles preuves de la supposition de part.

Dans

Dans ces circonstances on estime, que les hérétiers du Duc de Douglas ne doivent pas balancer à se pourvoir : le succès de cette poursuite paroît d'autant plus assuré qu'on ne voit rien dans les pieces, ny dans l'enquête, que le réclamant a fait faire à Edimbourg, que puisse former un fait justificatif : dernière reflexion qu'il est encore nécessaire de développer.

On ne peut pas concevoir l'idée d'une supposition de part, dont le prétendu pere et mere sont les auteurs, sans comprendre, qu'elle est toujours accompagnée de quelque apparence de possession d'état : c'est une manœuvre que l'on médite toujours avec reflexion ; qu'on prépare de loin ; et qu'on accredite, autant qu'il est possible, avant que de la faire éclater : on feint une grossesse ; on suppose un accouchement ; on produit un enfant ; on le presente au baptême, et la credulité le fait recevoir comme vrai ; ce qui en a les apparences, jusqu'à ce que le fait soit éclaircy : c'est ce qui est arrivé icy ; Lady Jeanne Douglas, dans son premier voyage à Reims, a supposé, qu'elle étoit grosse, personne n'ayant intérêt d'approfondir le fait, et prouvoir le croire ; après son voyage de Paris, et son retour à Reims, on a supposé, qu'elle étoit accouchée à Paris de deux enfans mâles ; on les a présenté successivement aux personnes que le Chevalier Stewart et sa femme fréquentoient ; la credulité a pu se prêter à cette fable ; et le progrès de cette erreur auroit pu s'étendre jusque dans la Grande Bretagne : quand tout cela seroit, l'espece de possession d'état, qui auroit pu en resulter, ne seroit qu'une circonstance ordinaire de ce genre de délit ; ce ne peut donc être un fait justificatif qui puisse surmonter, ni balancer, les preuves positives de la supposition de part.

Et, en effet, qu'on remonte à la source de cette affaire ; ceux qui ont pu croire, qu'Archibald et Sholto étoient les enfans du Chevalier Stewart, et de Lady Jeanne Douglas, n'ont pu fonder cette opinion, que sur ce qu'ils avoient oui-dire à d'autres ; et ceux-cy n'ont pu le croire que parceque les prétendus pere et mere, et la Demoiselle Hewit, leur confidente, le leur avoient dit ; car il est très remarquable, que de tous ceux qui ont parlé en faveur du réclamant, il n'y avoit qu'eux trois qui fussent à Paris lors du prétendu accouchement : tout porte donc sur la foy du Chevalier Stewart, de Lady Jeanne Douglas, et de la Demoiselle Hewit, leur complice ; mais ces sont les trois coupables de la supposition de part ; c'est ce qu'ils ont dit, et fait accroire, qui forme le corps même du délit ; dès qu'ils seront accusés, et valablement inculpés, leurs temoignages ne pourront plus faire de foy ; ainsi rien ne paroît devoir faire obstacle au succès que les hérétiers du Duc de Douglas doivent attendre de la preuve contraire.

Toutes ces observations concourent à déterminer la poursuite : il ne s'agit

s'agit plus que de sçavoir, quelle doit être, dans la forme, la manière de se pourvoir.

Il est certain d'abord, que ce ne peut être que par la voie de la plainte, et de la procédure extraordinaire; car la supposition de part est un crime grave: usurper un état, c'est voler un bien qui remferme en soy tous les autres, et ce délit entraîne des peines afflictives; ainisy il ne peut être poursuivi que par la voie établie pour l'instruction des crimes.

D'un autre côté, il est également constant, que cette poursuite ne peut se faire qu'en France, où le crime a été commis.

En effet, c'est un principe de droit naturel, et de droit des gens, que les crimes doivent être instruits et jugés par les juges, dans les territoires des quelles ils ont été commis; soit, parceque c'est un trouble dans l'ordre civil, qui doit être réparé par le magistrat, qui y exerce la puissance publique; soit, parceque le lieu du délit est celui où l'instruction est la plus facile, et que c'est proprement le siege des preuves; c'est la disposition de la loy, *cod. Theod. (de accusat. et inscript.) Oportet enim, dit l'empereur, illic criminum judicia agitari, ubi facinus dicatur admissum.* C'est ainisy ce qui est enseigné par la loy, 2 *cod. (ubi de ratiociniis, tam publicis quam privatis, agi oportet,)* ubi, dit cette loy, *instructio sufficiens, et nota testimonia, et verissima possunt documenta prestari.*

Si cette regle de competence est certaine du ressort d'un tribunal à l'autre, elle n'est pas moins constante d'une domination à l'autre; et on n'a jamais douté qu'un étranger, qui commet un crime, ne soit justiciable du souverain, dans les états duquel il l'a commis, à des juges qui y exercent la puissance; et si le jugement qui y intervient entraîne des consequences dans un autre pays, les regles de droit des gens ne permettent pas, qu'on l'y reconnoisse: ainisy, lorsque le crime, dont il s'agit, aura été juridiquement instruit, et authentiquement jugé en France, on doit esperer, que le jugement, qui y fera intervenû, sera reçu et reconnu dans la Grande Bretagne, comme émané des cette justice universelle, qui gouverne ce qui unit toutes les nations.

Enfin les circonstances de cette affaire persuadent, que c'est au parlement de Paris directement, et en première instance, que les hérétiques du Duc de Douglas doivent rendre leur plainte.

Si le crime n'avoit été commis qu'à Paris, ce seroit devant le Lieutenant-criminel du Châtelet qu'ils devroient se pourvoir; mais ce qui forme le délit est un fait continu, qui s'est passé dans les districts de divers tribunaux: c'est à Reims qu'on a simulé la grossesse; c'est à Paris qu'on a supposé l'accouchement, et produit l'enfant; on l'a conduit ensuite à Demmartin; et c'est en le faisant baptiser à Reims qu'on a, en quelque sorte, consommé, avec le plus d'éclat, le crime de la supposition de part; enfin ce crime a été, en quelque sorte, répété, et reproduit

réproduit à Reims, en y amenant le prétendu puisné des jumeaux. Il seroit peut-être difficile de décider lequel des juges de Paris, ou de Reims, est le plus compétent; mais comme ils résortissent, l'un et l'autre, au parlement de Paris, dont sa juridiction supérieure embrasse ces divers territoires, c'est le cas de rendre la plainte à ce tribunal souverain, qui en retiendra, sans doute, la connoissance; et c'est par le moyen de parvenir régulièrement, et plus promptement, à un jugement, dont la sagesse et le poids soient proportionnés à l'importance, et à l'éclat de cette affaire.

Délibéré à Paris ce dix Decembre, mil sept cens soixante deux, signé DOUTREMONT, DECAMBON, DE LA MONNOY, MALLARD, GERBIER.

O B S E R V A T I O N S.

DEPUIS la consultation donné par Messieurs Decambon, Mallard, De la Monnoy, et Doutremont, on a appris, que le Chevalier Stewart avoit été interrogé en Ecosse, dans la forme qui y est pratiquée, sur plusieurs questions, qui luy ont été faites, et que ses réponses contiennent une infinité de nouvelles preuves de la supposition de part.

1. Il y avouë, qu'à la fin de mai, ou au commencement de Juin, 1748, il fit seul un premier voyage de Reims à Paris, sans doute pour y préparer les manoeuvres du crime, que y a été consommé. Aveux de faits décisifs.

Il avouë, que le 4 Juillet 1748, à la descente du carosse de Reims, il alla avec Lady Jeanne Douglas, et la Demoiselle Hewit, loger à l'hôtel de Chalons, rue St. Martin.

Il avouë, qu'ils ont logé aussi à l'hôtel d'Anjou chez *le nommé Michel*; qu'il y avoit une veuve, qui demouroit dans la même maison (c'est la femme Blainville.)

Il avouë, que c'est de chez Michel qu'ils partirent pour aller à Dammartin, et qu'ils restèrent dix ou douze jours à Dammartin, avant que de retourner à Reims.

Ces faits sont décisifs, puisqu'en prouvant l'identité des personnes, ils déterminent l'application nécessaire, qui doit leur être faite de tous les faits, qui seront attestés par les témoins de Paris, et de Dammartin, sur l'impossibilité de l'accouchement à Paris.

2. Il continuë cependant à supposer, qu'ils ont demeure aussi chez la veuve le Brun, Aubergiste, qui, selon luy, avoit sa maison dans le terrain qui est entre le Pont neuf et le Luxembourg, à gauche: il dit, que c'est dans cette maison que Lady Jeanne est accouchée, et qu'ils y ont demeuré dix ou douze jours (Lady Jeanne ayant été retenue au lit pendant neuf jours.) Persévérance dans l'assertion de faits supposés, et impossibles.

Mais cela est démontré impossible, puisqu'il est certain, qu'il n'y avoit point de femmes du nom de le Brun, qui tint, en 1748, d'hôtel-garni, dans aucunes des rues indiquées, ni adjacentes ; et que, d'autre part, Lady Jeanne étant descendue le 4 Juillet à l'hôtel de Chalons, avec son mari, et la Demoiselle Hewit, et étant venus le 8 demeurer à l'hôtel d'Anjou, chez Michel, il n'y a pas eû un tems suffisant, pour qu'ils aient pû demeurer dix ou douze jours chez la prétendue femme le Brun ; et il n'y a même eû aucune intervalle entre leur résidence à l'hôtel de Chalons et leur entrée à l'hôtel d'Anjou ; puisqu'il sera prouvé, qu'ils restèrent à l'hôtel de Chalons jusqu'au 8 Juillet, où ils payèrent leur dépense ce jour même, qui étoit celui de leur entrée chez Michel.

Suppositions
relatives à Pi-
erre la Marre.

3. Le Chevalier Stewart, étant bien assuré, qu'on ne trouvera point de Pierre la Marre, qui fut accoucheur à Paris, a supposé que cet homme étoit un étranger, qu'il avoit connu à Liège en 1721 ; qu'il l'avoit rencontré, aux Thuilleries ; qu'il avoit eû la confiance de le rétenir pour accoucher sa femme, sans s'être jamais informé, où il demeurait ; mais qu'il étoit assuré de le trouver toujours, ou aux Thuilleries, ou au Luxembourg, ou au Café Pellétier près la Grève, ou dans un cabaret près le Pont St. Michel ; et que, lorsque, après son départ de Paris, il luy avoit écrit, il adressoit ses lettres à *Monsieur de la Marre, Chirurgien, à la poste, à Paris* ; et qu'enfin ce Pierre la Marre avoit été chirurgien d'un régiment Wallon.

Mais toute cette histoire est le comble de l'absurdité.

Quand on choisit un accoucheur, on a grand soin de sçavoir, où il demeure, pour pouvoir le faire venir dans des momens si imprévus, et si pressants ; les endroits, où on suppose qu'on pouvoit le trouver, sont si éloignés les uns des autres, qu'on auroit pû le chercher tout un jour sans le trouver ; il ny a point de régiment Wallon au service de France ; il seroit impossible que des lettres adressées à la poste de Paris, pour un étranger, qui ny est pas connu, luy fussent rendues : une pere ne prend-il pas d'autres précautions pour assurer sa correspondance avec un homme, aux soins duquel il a confié son fils ? on n'a jamais accumulé tant d'absurdités que parcequ'on n'a pû indiquer le domicile de Pierre la Marre, attendu que c'est un personnage imaginaire.

Fausseté des
lettres attri-
bues à Pierre
La Marre.

4. Sur les prétendues lettres de Pierre La Marre, représentées à Edimbourg, le Chevalier Stewart a dit, qu'il n'y en avoit qu'une ou deux des originales ; que les autres étoient des copies, qu'il avoit fait faire par un nommé André Clinton, commis au bureau de la guerre, ou du trésor, à Londres.

Mais il a été vérifié, par les magistrats d'Edimbourg, que ces lettres étoient toutes sur du papier François, et qu'elles avoient toutes été cachetées

chetés du même cachet ; ce qui, joint à l'Anglicisme qui y regne, prouve, que ces sont de pieces absolument supposées.

5. Enfin, comme on a demandé au Chevalier Stewart à quelle heure Lady Jeanne Douglas étoit accouchée, il a répondu, que c'étoit *le matin* ; cependant il a écrit, dans sa lettre du fixième d'Août, que c'étoit *le soir*, et que c'étoit la raison, pour laquelle, dans une lettre précédente du dixième Juillet, il n'avoit point parler d'un fait aussi important ; qu'on joigne à cela la lettre de la Demoiselle Hewit, du vingt-deuxième Juillet, où pour se disculper également, de n'avoir point parler de l'accouchement, dans une qu'elle avoit écrit l'onzième, elle suppose, qu'elle s'étoit trompé, en la dattant du onzième au lieu du dixième : ces circonstances rassemblées persuadent, que le projet des auteurs de la supposition de part n'avoit pas été, d'abord, de placer l'accouchement le dixième Juillet, et que ce n'est qu'après-coup qu'on a choisi cette époque, apparemment qu'il y eût un intervalle vray-semblable entre ce prétendu accouchement, et le retour à Reims : mais ce sont ces variations mêmes, et ces contradictions, sur un fait aussi capital que l'est l'époque de l'accouchement, qui en prouvent la supposition et l'imposture.

Contradiction de ce que le Chevalier Stewart a répondu, avec ce qu'il avoit écrit.

Si ces nouvelles observations, sur ce qui est émané de la propre bouche du Chevalier Stewart, avoient pû être mises sous les yeux des jurisconsultes, qui ont donné leur avis, on ne doit pas douter, qu'ils n'eussent conseillé, avec encore bien plus d'affurance, la poursuite d'une affaire, où les preuves se multiplient, et éclatent de toutes parts.

N U M B E R XI.

EXCERPT of Mémoire sur la plainte, drawn up by Monsieur Doutremont, produced by Mr. Stuart, 18th August 1764.

IN this memorial Monsieur Doutremont admits the possession of state for twenty years to be conclusive, and that no action of *partus suppositio* can thereafter be instituted. The name of Louis Pierre La Mart is a circumstance insisted on: the capital fact of the *alibi* is stated in this manner :

Impossibilité que Lady Jeanne Douglas soit accouché à Paris le dixième Juillet, ni pendant tout le séjour qu'elle y a fait.

En même tems que le réclamant allégué, que Lady Jeanne Douglas est accouchée à Paris le dixième Juillet, il convient, qu'elle n'y étoit arrivée

arrivée avec la Demoiselle Hewit, et son mary, qu'au commencement de Juillet, et qu'ils en partirent au commencement d'Août suivant ; en sorte que leur séjour à Paris ne fût que de trois semaines, où un mois ; mais nous avons des moyens, encore plus assurés, de fixer les époques, et de découvrir la vérité, jusques dans sa source.

Pour répandre plus d'ordre sur cette portion critique de l'affaire, on va examiner trois pointes.

1. L'époque et la durée du séjour du Chevalier Stewart, de Lady Jeanne Douglas, et la Demoiselle Hewit à Paris.

2. Où ont-ils demeuré pendant ce séjour ?

3. Qu'est ce qui s'y est passé ?

Le résultat de ces trois pointes fera une démonstration de l'impossibilité que Lady Jeanne Douglas soit accouchée.

1. Quant au séjour du Chevalier Stewart, de Lady Jeanne Douglas, et la Demoiselle Hewit, à Paris, l'époque en est constaté.

Ils y vinrent par le carrosse de Reims, qui partit de Reims le deuxième Juillet 1748, et arriva à Paris le quatrième Juillet ; ce fait est prouvé par l'extrait de la feuille du carrosse de Reims, qui porte, qu'il y a été rétenû trois places pour Monsieur Stewart : cet extrait est produit.

A l'égard de leur départ de Paris pour Dammartin, il est du commencement d'Août, en sorte qu'ils ne restèrent à Paris que trois semaines ou un mois : on en a aussi la preuve écrite.

En effet, on verra, dans un instant, que la femme Favre, qui fût choisie pour nourrir le réclamant, étoit à Paris, au mois de Juillet, avec son enfant ; qu'elle en partit, ainsi que son enfant, avec les accusés, pour aller à Dammartin ; or, cet enfant de la nourrice est mort à Dammartin le neuvième d'Août 1748 ; on produit son extrait mortuaire ; ils étoient donc tous partis de Paris, et arrivés à Dammartin, avant le neuvième d'Août 1748. La nourrice a dû déposer, que leur arrivée à Dammartin précéda, de quelques jours, la mort de son enfant : et la Demoiselle Hewit est, en effet, convenüe, qu'ils étoient partis de Paris, vers le premier d'Août.

Le séjour des accusés à Paris n'a donc duré que depuis le quatrième Juillet jusqu'au commencement d'Août, environ un mois ; on ne doit pas perdre de vue cet intervalle de tems, dans lequel doivent se renfermer les preuves de tout ce qui s'est passé.

2. Où les accusés ont-ils demeuré pendant ce séjour à Paris ? cette pointe devient encore plus intéressant, parceque c'est en l'établissant, et en constatant l'identité des personnes, qu'on pourra leur appliquer, avec certitude, ce qui doit résulter des dépositions des témoins qui les y ont vû ; or, c'est sur quoi les plaignants ont aussi l'avantage de rapporter la preuve la plus parfaite.

Il est certain, que les accusés, en descendant, le 4 Juillet, du carosse de Reims, logèrent chez le nommé Godefroy, à hôtel de Chalons, rue Saint Martin; cela doit être constaté par les dépositions de Godefroy, et de sa femme.

Ils ont même rapporté le registre de leur dépense, où l'on voit, qu'ils y ont demeuré depuis le quatrième jusqu'au huitième, (jour au quel ils ont payé leur dépense.)

On voit ensuite, que ce jour même, le 8 Juillet, ils sont venus demeurer chez le nommé Michel, aubergiste, qui tient l'hôtel d'Anjou, rue Serpente.

Ce fait important est constaté par le registre de l'inspecteur de police, tenu pour cette auberge, et qui est joint au procès, sur le quel il est écrit, *M. Fluralt, Ecoffois, et sa famille, entré le huitième Juillet, mil sept cens quarante huit.*

La différence du nom de Stewart, en celui de Fluralt, fait d'abord naître une doute sur l'identité des personnes; mais il faut convenir, aussi, que si ce nuage est dissipé, et l'identité avérée, ce changement de nom, indiquant le mystère et l'intrigue, est une circonstance de plus, qui s'élèvera pour confondre les accusés.

Or, cette identité et la résidence des accusés chez Michel est un fait, qui se manifeste par une infinité d'autres preuves.

Si d'abord on compare l'écriture du registre de l'inspecteur avec cette des différentes lettres, écrites par le Chevalier Jean Stuart, il y a lieu de croire, que c'est luy-même, qui a écrit, de sa main, sur le registre, *M. Fluralt, et sa famille, entré le huit Juillet 1748.*

D'un autre côté, on a découvert, qu'en l'année 1756 une personne, qui s'intéressoit au sort du réclamant, ayant appris, que le Chevalier Jean Stewart publioit en Ecoffe, que le jumeaux étoient nés chez le nommé Michel à Paris écrivit au Sieur Gordon * Principal du College des Ecoffois, pour s'informer de la vérité de ce fait, et luy envoya la note indicative de cette naissance, où Michel est nommé, comme celui dans la maison duquel ces jumeaux étoient nés, au commencement du mois de Juillet 1748.

Cette même personne lui demanda, peu de tems après, de s'informer de l'accouchement par la nourrice, qu'il luy avoit mandé être au service de Madame la Marquise de Pompadour, et qui est l'une des témoins entendus en la cour.

Le Sieur Gordon a dû déposer de ce fait, et a rapporté (en exécution d'un arrêt qui l'a ordonné) les lettres et la note qui luy furent envoyées d'Angleterre, preuve constante, que le Chevalier Jean Stewart est con-

* Voyez les lettres jointes au procès, en vertu d'un arrêt qui l'a ordonné.

venu luy-même en Ecosse, qu'il avoit demeuré chez Michel, où il supposoit que l'accouchement avoit été fait vers le commencement de Juillet 1748 ; où Michel et sa femme ont dû déclarer, que l'un des deux prétendus jumeaux avoit été apporté, quelques jours après l'entrée du Chevalier Stewart et sa femme ; et où la nourrice entendue à dû déclarer avoir été chargée de cet enfant.

Mais est-il besoin de toutes ces circonstances, pour établir la demeure des accusés chez Michel ? leur identité ne peut manquer d'être prouvé par une chain suivie de dépositions des personnes, qui les ont vû successivement dans la maison de Michel, à Dammartin, et à Reims.

Michelle, sa femme, leur gendre, et la femme Blainville, les ont vû pendant la résidence qu'ils ont fait à l'hôtel d'Anjou, rue Serpente ; c'est la femme Michel qui leur indiqua, pour nourrice, la femme Favre, qui, depuis ce tems, et encore aujourd'hui, est au service de Madame de Pompadour ; cette nourrice partit avec eux de l'hôtel d'Anjou, pour aller à Dammartin, où ils ont été vûs de plusieurs personnes, qui ont aussi été entendues ; ceux qui les ont vûs partir ensemble de Paris de chez Michel, ceux qui les ont vû arriver ensemble à Dammartin, doivent le déposer ; la Favre n'ayant pas voulu s'engager d'aller avec eux à Reims, on trouva à Dammartin une autre nourrice, qui moissonnoit des bleds ; cette seconde nourrice et son mari les suivirent de Reims, où le réclamant fut présenté publiquement, et baptisé le 22 Septembre 1748 ; ainsy tous les témoins de Paris, de Dammartin, et de Reims, doivent s'être réunis, pour constater le fil de l'identité, et pour prouver, que les mêmes personnes, qui ont fait baptiser l'enfant à Reims le 22 Septembre, étoient à Paris chez Michel au mois de Juillet précédent ; et cette chaine, soit qu'on la suive en montant, ou en rétrogradant, fournira une preuve de l'identité aussi claire que le jour.

Qu'après cela on trouve sur le registre de l'inspecteur de police, tenu chez Michel, le nom de *Fluralt*, au lieu de *Stewart* : tout ce qui en résulte c'est, que c'est un déguisement de nom, assorti à la manoeuvre criminelle, dont les accusés étoient occupés ; c'est une fausseté de plus.

On voit aussi, que quoiqu'ils soient sortis de chez Godefroy, et qu'ils aient païé leur dépense le 8 Juillet, jour au quel ils sont venus loger chez Michel, cependant ils ont réparés encore chez Godefroy, et ils y ont fait une nouvelle dépense les jours suivans ; mais cette double résidence se confilie encore parfaitement avec les faits ; car on va voir que les accusés, après s'être établis chez Michel, en ont disparus quelques jours, comme s'ils étoient allés faire un petit voyage, et y sont
révenus

révenûs ensuite rapporter un enfant, qu'ils ont dit être celui de Lady Jeanne Douglas ; où étoient-ils pendant cette absence de l'hôtel d'Anjou ? chez Godefroy à l'hôtel de Chalons. C'est qu'il convenoit au plan de cette intrigue, d'avoir deux demeures différents, et deux noms différents ; à l'hôtel de Chalons, on meditoit, préparoit le crime ; on l'a consommé à l'hôtel d'Anjou, en y amenant l'enfant : voilà tout le dénouement.

3. Le tems du séjour des accusés à Paris, et les lieux où ils ont demeurés, étant indubitablement fixés, il ne s'agit plus que de sçavoir ce que s'est passé ; et pour cela de consulter tous les témoins, qui les ont vû et fréquenté, tant à l'hôtel de Chalons, chez Godefroy, qu'à l'hôtel d'Anjou, chez Michel ; et ceux mêmes, qui les avoient vû précédemment à Reims, et qui depuis les ont vû à Dammartin.

On ignore, ce que les témoins ont rapporté, mais il est des faits généraux et notoires, dont on est suffisamment instruit, pour se persuader, qu'il résultera de toutes ces dépositions une preuve parfaite, qu'il est physiquement impossible, que Lady Jeanne Douglas soit accouchée ni le 10 Juillet 1748, ni dans aucun autre tems de cette époque critique.

Aucuns des témoins entendûs à Reims, ne peut dire qu'il ait remarqué dans la personne de Lady Jeanne Douglas, au tems de son départ, les apparences d'une grossesse avancée.

Aucuns des témoins entendûs à Paris, et qui l'ont fréquenté soit à l'hôtel de Chalons, soit à l'hôtel d'Anjou, ne dira, qu'il ait vû ni un accouchement, ni aucunes des choses, qui peuvent y être accessoire ; on n'a vû aucun médecin, accoucheur, ni sage-femme venir la visiter ; on ne l'a point vû indisposée ni garder le lit un seul jour.

Aucuns des témoins, qui l'ont vû ensuite à Dammartin, ne dira, qu'elle eut l'apparence d'une femme nouvellement accouchée.

On a consulté les registres de toutes les paroisses du Faubourg St. Germain, et on en a produit des certificats, on ne trouve point d'enfant, pendant tout le séjour de Lady Jeanne à Paris, du nom de Stewart, qui ait été baptisé, ni ondoyé ; cependant la religion fait une loi aux pere et mere de cette précaution salutaire, et la déclaration de 1736 enjoint aux accoucheurs, et sages-femmes, de faire leur déclaration de tous les ondoyemens qu'ils font.

La brévité du séjour que Lady Jeanne Douglas a fait à Paris, et ses changements de demeures n'offrent point d'intervalle, ni pour l'accouchement ni pour le repos qui doit suivre un accouchement ; arrivée à l'hôtel de Chalons le 4 Juillet, elle n'y reste que 4 jours : elle vient à l'hôtel d'Anjou le 8 ; mais elle en dispartoit aussitôt, pour retourner à l'hôtel de Chalons, où on la retrouve avec son mari, et la

Demoiselle

Demoiselle Hewit* ; elle révient ensuite à l'hôtel d'Anjou, avec un enfant, de plusieurs semaines ; mais de sa sortie, à son retour, on ne trouve point de tems pour l'accouchement, placé au 10 Juillet, jour au quel il doit être prouvé, qu'elle étoit chez Godefroy, à l'hôtel de Chalons ; on ne peut, à plus forte raison, supposer, que Lady Jeanne Douglas soit accouchée ce même jour, dix Juillet, chez une Dame le Brun, où suivant la déposition de la Demoiselle Hewit, en Ecoffe, elle demeura dix jours : fait qui doit être prouvé faux et impossible, par les dépositions de Godefroy et sa femme, Michel et sa femme, Breval perruquier, la Dame Blainville, et la nourrice, comme par le registre de police ; et qui fournit une nouvelle preuve, que la femme le Brun, n'est qu'un personnage imaginaire ; ainsi l'imposture transpire et éclate de toutes parts.

Il est remarquable cependant, qu'à travers le voile, dont on a voulu couvrir la vérité, on reconnoit quelques unes des personnages, indiqués dans la procédure d'Ecoffe ; on a osé affirmer, dans l'acte fait en Ecoffe, que Lady Jeanne Douglas étoit accouché chez la Dame le Brun, en présence de Pierre La Marre, accoucheur, de Madame le Brun, de sa fille, d'une veuve, qui logeoit dans la même maison, et de Mademoiselle Helein Hewit.

La femme Michel dont, suivant les lettres écrites au Sieur Gordon, en 1756, la maison a été indiquée par une mémoire, dressé sur le rapport du Chevalier Stewart, luy-même, est la Dame le Brun ; elle avoit une fille, qui étoit morte : la veuve, qui logeoit dans la même maison, est la Blainville : La Marre est un personnage supposé, la Demoiselle Hewit est la perpetuelle complice.

Ainsy on a changé le lieu de la scene ; on a déguisé ou dissimulé les noms de quelques personnages ; on en a supposé d'autres ; mais à travers tous ces déguisemens, on reconnoit encore les traits du canevas sur lequel cette fable a été tissée.

Ces reflexions suffiroient, sans doute, pour démasquer la supposition de part ; mais il est un fait plus important, qui établit, sans réplique, l'impossibilité d'un accouchement à Paris, et que le réclamant soit fils de Lady Jeanne Douglas.

Plusieurs témoins ont dû déposer, qu'aussitôt après que les accusés furent arrivés à l'hôtel d'Anjou, chez Michel, ils en sortirent, s'absentèrent quelques jours, et revinrent avec un enfant, âgé de plusieurs semaines, qu'ils dirent être fils de Lady Jeanne Douglas.

C'est cet enfant à qui on donna pour nourrice La Favre, qui fut indiquée par la femme Michel ; c'est luy, que les accusés amenèrent à

* Voyez le certificat, produit des registres de police, qui prouve, que le 12 Juillet ils étoient à l'hôtel de Chalons, comme Godefroy et sa femme ont dû le déposer.

Dammartin, et de là à Reims, où il fut baptisé sous les noms d'Archibald-Jacques-Edouart : enfin, c'est le réclamant, c'est luy-même.

Qui ne feroit frappé de l'induction victorieuse qui résulte d'un tel fait, seul suffisant pour emporter la conviction.

Si le réclamant fut apporté à l'hôtel d'Anjou, chez Michel, par les accusés à leur retour, après peu de jours d'absence, il n'y a point eu d'accouchement chez Michel, ni le dixième Juillet, ni pendant tout le tems que les accusés y ont demeuré.

Si cet enfant avoit alors plusieurs semaines, et quand même il n'auroit eu que quinze jours, Lady Jeanne Douglas ne pouvoit pas être sa mere, car elle ne pouvoit pas en être accouchée à Paris où elle n'étoit arrivée que le 4 Juillet, six jours avant l'époque de cette prétendue naissance : le 2 (huit jours avant) elle étoit encore à Reims, et on ne prétend pas, qu'elle soit accouchée à Reims, puisqu'au contraire on suppose, qu'elle en est partie enceinte ; Lady Jeanne Douglas n'a donc pu, ni le 10 Juillet, ni dans aucun tems voisin, être accouchée du réclamant ; cette impossibilité est absolue et physique ; qu'on ajoute à cela, que c'est un seul enfant qui fut apporté à l'hôtel d'Anjou ; qu'on n'y en a jamais vu deux ; et on ne pourra disconvenir, que l'accouchement prétendu de deux enfans est la plus insigne imposture, ou plutôt deux suppositions, qui vraisemblablement n'ont été que successivement imaginé ; et qui ne feroit, après cela, saisi d'indignation d'entendre la Demoiselle Hewit assurer dans l'enquête faite à Edimbourg, qu'elle étoit présente à l'accouchement, et qu'elle avoit reçu les deux enfans dans son giron : ne s'est elle pas rendue, en même tems, coupable d'un faux témoignage, et complice de la supposition de part ?

En un mot, le réclamant est l'individu, qui a été apporté à l'hôtel d'Anjou, par les accusés, après la courte absence qu'ils firent de cet hôtel : et cet individu ne peut pas être né de Lady Jeanne Douglas ni le dix Juillet, ni dans aucun tems voisin de l'époque donnée ; il n'étoit pas donc son fils ; elle n'étoit point sa mere. La supposition de part est donc établie, et si plusieurs témoins ont vu apporter cet enfant, s'ils en déposent positivement, c'est la preuve la plus juridique, et la plus concluante, qu'on puisse désirer dans cette matière.

Après tant d'observations décisives, il de reste rien à ajouter pour opérer la conviction du crime de supposition de part ; mais la singularité de cette affaire offre encore un dernier genre de réflexions, qu'on a annoncées ; c'est que le réclamant n'a en sa faveur aucune circonstance ni présomption, qui puisse balancer l'autorité des preuves qu'on luy oppose, &c.



E X C E R P T S

N U M B E R XII.

E X C E R P T S of Accounts from Godfroy's Book, which show the frequency of Women-lodgers in his house, and that they are always mentioned under some description or other, though the names and designations of the men who accompanied them are not known, and left blank;—— so that had the account of the 4th July 1748 applied to Sir John Stewart; Lady Jane, &c. it would have run thus, supposing Godfroi to have been ignorant of the name or designation of Mr. Stewart: "Monf. — Mad. son épouse, et "une dame de compagnie;" and at the end of the account would have been, "Cinq jours et demi pour Monf. et ces dames."

1747, Mars 16	M ONS. de Choffin est entré à soupée, Mad et Mademoiselle sa fille.	1748, May 12	Monf. Sanen est entré à soupée, avec Mad. son épouse.
		Juin 1	Dix-neuf jours et demi pour Monf. et Mad. Monf. et Mad. sont de retour à soupée.
Mars 7	Monf. — est entré à soupée, Mad. son épouse et Monf. son fils.	1748, Aoust 9	Monf. — est entré à soupée, et Mademoiselle sa soeur.
3	Deux jours pour Monf. Mad. et leur fils.	10	Monf. et Mad. ont soupe.
Mars 7	Monf. — est entré à soupée, et une demoiselle.	1748, Sept. 9	Monf. Serpe et Mad. son épouse sont entrés.
Juin 27	M. — sont entrés à soupée, et une femme de chambre.	13	Trois jours et demi pour Monf. et Mad.
May 5	Monf. Perrier. Mad. son épouse, une femme de chambre.	1747, Aoust 28	Monf. Lenen et Mad. le Pecheur sont entrés.
10	Monf. Mad. et le femme de chambre sont partis au matin.	Sept. 13	Monf. et Mad. sont partis après dîner.
12	Monf. Mad. et la femme de chambre sont de retour.	16	Monf. et Mad. sont de retour.
17	Onze jours pour Monf. Mad et la fille.	1748, Aoust 4	Monf. et Mad. Terion sont entrés à soupée.
May 19	Mad. de Lomel est entrée à soupée, et une fille.	31	Monf. et Mad. sont entrés à soupée.
1747, May 11	Mad. — sont entrées à soupée, et une femme de chambre	1748, Aoust 11	Mad. le Fricourt est entrée à soupée, et Mademoiselle sa fille.
Aug. 31	Monf. Mailfort Mad. de Forzy, et une femme de chambre, sont entrés à soupée	21	Mad. et Mademoiselle sont partis au matin.
	Un jour et demi pour Mad. Monf. et la femme de chambre.	Nov. 10	Mad. de la Porte.
Sept, 11.	Quinze jours pour Monf. Mad. et la femme de chambre.	1748, Oct. 19	Monf. et Mad. Haucriteau sont entrés à dîner, et un garçon.
1748, Avril 27	Monf. et Mad. Terion sont entrés à soupée,	21	Deux jours pour Monf. Mad. et le garçon.
May 16	Monf. et Mad. ont soupe.	1748, Dec. 21	Monf. de Besne est entré à soupée, Mad. son épouse, Mademoiselle sa fille, et deux domestiques.
1748, Mars 28	Monf. Smellier est entré à soupée. — Mad. son épouse et une amie		Trois jours pour Monf. et ces dames.
29	Un jour et demi pour Monf. et Mad.		Trois jours pour les gens.
May 9	Monf. Dorigny est entré à soupée et Mad. son épouse	1749, Fev. 23	Monf. — et Mad son épouse sont entrés à dîner.
	Quatre jours et demi pour Monf. et Mad.	1749, May 16	Monf. de Besne est entré à dîner, Mad. et Mademoiselle sa fille, et une femme de chambre.
	Trois jours et demi pour la femme de chambre.		Monf. et ces dames sont partis au matin, et la femme de chambre.
			Un jour pour Monf. et Mad. et la femme de chambre.

- 1749, Juin 12 M. de Brevery est entré à soupée et Mad. Dix-huit jours et demi pour Monf. et Mad.
- Sept. 9 Monf. — et Mad. son épouse sont entrés à soupée.
- Sept. 13 Monf. — et Monf. son fils sont entrés à soupée. — The word *Meunier* filled up afterwards.
- 1749, Oct. 12 Monf. — est entré à soupée, et Mad. son épouse.
- Oct. 22 Mad. Berthelin, Monf. son fils et Mademoiselle sa fille sont entrés à diné.
- 1750, Juillet 4 Monf. — et Mademoiselle sa soeur sont entrés à diné.
- Aoult 25 Monf. — est entré à diné, et Mad.
- 26 Monf. et Mad. sont partis au matin, un jour
- 27 Monf. et Mad. sont de retour à soupée.
- 1750, Juillet 27 Mademoiselle — est entré à diné, et une femme de chambre et un domestique.
- 1750, Sept. 12 Monf. Dupleix et Mad. son épouse sont entrés à soupée.
- 1750, Oct. 18 Monf. Jaron et Mad. son épouse sont entrés à soupée.
- Un jour pour Monf. et Mad. son épouse en allans à St. Denis
- 27 Monf. est parti, et Mad.
- 29 Monf. et Mad. sont de retour à soupée.
- 1750, Nov. 14 Monf. de Baine est entré à soupée. Mad. son épouse, Mademoiselles ses filles une femme de chambre, et un domestique.
- 16 Deux jours pour Monf. et Mad. et ces demoiselles.
- Deux jours pour la femme de chambre et le garçon
- 1751, Mars 16 Monf. Bodin est entré à soupée, Monf. son fils, et un domestique.
- 1751, Avril 19 Monf. et Mad. sont entrés à diné.
- Avril 23 Mad. de Lannay de Couvernon est entrée à soupée, et un domestique.
- 1751, May 3 Monf. et Mad. de Smelier sont entrés à soupée, et un domestique.
- 1751, Juin 9 Monf. et Mad. Craillon sont entrés à soupée
- 18 Neuf jours et demi pour Monf. et Mad.
- 1751, Oct. 11 Monf. Amelin et Mad. son épouse, deux garçons et deux chevaux.
- Deux jours et demi pour Monf. et Mad.
- 1751, Dec. — Monf. du Frêne et Mad. sa mere sont entrés à soupée
- 1752, Avril — Monf. — est entré, une gouvernante, deux domestiques.
- 1752, May 2 Monf. Bejons et Mademoiselle sa soeur sont entrés à soupée.
- 13 Monf. et Mad. sont partis au matin.
- 14 Monf. et Mad. sont de retour.
- 1752, Aoult 16 Monf. et Mad. le Roy sont entrés à soupée. Monf. et Mad. sont partis au matin. Cinq jours et demi.
- 1752, Juillet 5 Monf. — et Mad. son épouse sont entrés à soupée. — *Perrot* is filled up in the blank.
- 17 Monf. et Mad. sont partis au matin. Monf. et Mad. sont de retour.
- 1752, Oct. 4 Monf. de la Croix et Mad. son épouse sont entrés à soupée, et deux filles.
- 1752, Nov. 13 Monf. Amelin, Monf. son frere, et Mademoiselles ses soeurs deux domestiques, sont entrés à soupée.
- 1753, Fev. 22 Monf. l'Abbé du Croy et deux dames hospitalières sont entrés à diné.
- 28 Monf. et ces dames sont partis au matin, Six jours
- 1753, Mars 8 Monf. Camusa est entré à soupée, Mademoiselle sa niece, et une femme de chambre.
- 1753, May 10 Monf. et Mad. de Faucompre Onze jours pour Monf. et Mad.
- 1753, Avril 25 Monf. Berthelin est entré à soupée, deux demoiselles, et une femme de chambre. Cinq jours et demi pour Monf. Cinq jours et demi pour ces demoiselles et la femme de chambre
- 1753, Avril 28 Monf. de Neuf est entré à soupée, Mad. son épouse, une femme de chambre, et un domestique.
- 30 Trois jours pour Monf. et Mad.
- May 16 Quinze jours pour Monf. et Mad.
- Avril 30 Monf. et Mad. de Smelier sont entrés.
- May 8 Huit jours pour Monf. et Mad.
- 1753, Aoult 9 Monf. et Mad. de Villefroy sont entrés à soupée, une femme de chambre, et un domestique.
- Monf. et Mad. ont soupée, et la femme de chambre.
- 1753, Juin 26 Mad. Daget de Marfeilles est entrée à soupée.
- 1753, Oct. 20 Monf. et Mad. Truel sont entrés à soupée.
- Oct. 30 Monf. de Gaudry, Mad. de Coudoreil, Monf. son fils, une femme de chambre, et un garçon, sont entrés.
- Nov. 2 Trois jours et demi pour Monf. et Mad.
- Nov. 11 Mad. Dupré, marchande de Rouen, est entrée à soupée
- 1753, Dec. 17 Mademoiselle de Lage est entrée à soupée, et une femme de chambre.
- 1754, Fev. 10 Mad. — sont entrées au soir.
- Fev. 21 Monf. et Mad. Truel sont entrés à soupée.
- 1754, Fev. 3 Monf. de Betterar est entré au soir, Mad. son épouse, une femme de chambre, et un garçon.

1754, Fev.

1754, Fev. 28	Monf. de Popercourt, Mad. son epouse, Monf. leur frere, et Mademoiselle Rosier, et deux domestiques sont entrés à soupée.	1754, Avril 29	Monf. — est entré à soupée, Mad. son epouse, Mademoiselle sa fille, et une femme de chambre.
1754, Fev. —	Mad. Leury est entrée au soir.	May 9	Monf. Amelin et Mademoiselle sa soeur, et un domestique, sont entrés à soupée.
Mars 15	Monf. Boutet receveur de Tailles, et Mad. son epouse sont entrés à soupée, et une femme de chambre.	Juin 25	Monf. Caron et Mad.
1754, Avril 17	Monf. Tromagot et Mad. sa soeur sont entrés	1754, Juillet —	Monf. — est entré au soir, et mes demoiselles ses nieces.

N U M B E R XIII.

EXCERPTS of Accounts from Godfroy's Book, which ascertain, that his Practice was to put down the designations of people, when he knew them at their entry, though he did not know their names; — so that if the Account of the 4th July 1748 had applied to Sir John, he would have been entered " Monsieur — " " Colonel Ecoffois," as this designation was known to Godfroy from the beginning.

N. B. Where proper names are filled in, this appears to have been done at an after period, when Godfroy or his wife came to the knowledge of them, and are therefore printed in *Italicks*.

1748, Oct. 7	M ONS. — officier au regiment d'Orleans, Cavalerie.	1751, Juin 6	Monf. — des chevaux legers de la garde du roi est entré à soupée.
1748, Fev. 12	Monf. [Stapleton] officier dans le regiment de Fitz-james est entré à soupée, et un garçon.	Juin 17	Monf. [Dick] Chevalier du Roi.
1749, Aoust 17	Monf. [Courard] Capitaine de vaisseau de Brest.	1752, Avril 14	Monf. [de Hanche] Seigneur du Guy, près Châlons, est entré à soupée.
1749, Aoust 6	Monf. [Bellevue] directeur des fermes de Dijon.	Juillet —	Messrs. — de Montpellier sont entrés à soupée.
Aoust 31	Monf. [— de Caintoux] preteur royal d'Hageneau est entré.	1752, Dec. 19	Monf. — le lieutenant-general est entré à soupée, un domestique, et deux chevaux.
1750, Juin 2	Monf. [Barbara] de Lyon est entré à soupée.	1753, Fev. 4	Monf. [— marchand de Troyes] est entré à soupée.
Juin 4	Monf. — de Boilleduc est entré à soupée, et un garçon.	1753, Avril 14	Monf. [Mouchard] marchand de Beaume.
1750, Nov. 16	Monf. [Birgasse] negociant de Lyon.	1753, May 31	Monf. — religieux est entré à soupée.
1750, Dec. 27	Monf. [Martin] negociant de Limoges est entré à soupée.	1753, Aoust 9	Monf. de la Chaume, capitaine au regiment de la Holstein, au service de S. A. Palatine.
1751, Jan. 2	Monf. [Badouin] officier des chevaux legers.	1753, Nov. 1	Monf. [Mainesta] Comte de Lyon est entré au soir.

NOTE

N U M B E R XIV.

NOTE of persons in Godfroy's *livre de depense*, who have been at first entered under the word *Monsieur* only, and whose names have been filled up, on his or his wife's afterwards coming to the knowledge of the names; — so that had the account of the 4th July 1748 applied to Sir John, &c. his name ought to have been filled up in the blank, as it is admitted his wife knew the name on the 7th July.

As the Book, which was current in July 1748, is in the *Tournelle*, it cannot appear from the copy how many of the names therein have been filled up afterwards; — but sundry of them were excerpted, and are printed on pages 1051, 1052, and 1053, Defender's Proof: what follows are in the Book which commenced after the month of July 1748, and was kept in the same manner with the preceeding Book.

N. B. The words which have been filled up in the original blank are in *Italick*, and inclosed thus [].

1748, Fev. 12 *	M O N S. [Stapleton] officier dans le Regiment de Fitz-james est entré à soupée.	1749, Sept. 13	Mons. [Mennier] et Mons. son fils sont entrés à soupée.
1749, Mars 17	Mons. [Garde] est entré à soupée.	1749, Nov. 26	Mons. de Sentent [capitaine au regiment] est entrée.
Mars 30	Messrs [Les Barons de Greiffullau, 3 freres] sont entrés à diné, et un domestique.	1749, Dec. 7	Mons. [le Chevalier de Surinbrune de Londre.]
1749, Avril 1	Mons. [Prequet] est entré à soupée.	1749, Dec. 13	Mons. [Rillard de Laon] est entré à soupée,
4	Trois jours et demi.	1750, Juin 2	Mons. [Barbara negociant] est entré à soupée.
1749, Avril 8	Mons. [Soumbroun, directeur des comptes des hospitaux de l'armée de Provence.]	1750, Juin 22	Mons. [Villemoir, et Mons. Noir,] est entré à soupée.
Avril 17	Mr. [Jean William, negociant Anglois de Londre] est entré à soupée.	1750, Avril 24	Mons. [du Roche] est entrée à soupée.
1749, May 11	Mons. [Maiguet negociant de Lisle] est entré à dîné.	1750, May 11	Mons. [Chenûte] est entré à soupée.
1749, Juin 26	Mons. [Lombart] est entré à soupée.	1750, Août 22	Mons. [le Chevalier de la Grange] est entré à soupée.
1749, May 18	Mons. [Duhamel] est entré à diné, et un domestique.	1750, Oct. 22	Mons. [Theodore et Mons. Paru negocians de Genève] sont entrés à soupée.
May 18	Mons. [Danipiere d'Albeville] est entré à diné.	Oct. 17	Mons. [Fleriau] est entré à soupée. Neuf jours et demi.
May 29	Mons. [de Britto Marchand Portugais] est entré à soupée.	1750, Nov. 12	Mons. Rienfette et Mons. [Thuron de Montpellier] negociant de Lyons sont entrés.
1749, Août 31	Mons. [de Canteaux] preteur royal de Haguenau est entré à soupée.	1750, Dec. 1	Mons. [de Prode] est entré à diné.
1749, Sept. 2	Mons. [Seguin, marchand,] est entré à soupée.	1750, Dec. 21	Mons. [Amelin receveur de deniers de Senes] est entré à soupée.
1749, Oct. 6	Mons. [Dezville, seigneur de Banvil d'Anvers] est entré à soupée.		

1750, Dec.

* The date should be 12th February 1749, though it is 1748 in the Book.

1750, Dec. 27 Monf. [Martin] negociant de Limoge
est entré à soupée.

1750, — 14 Monf. [Legois] est entré à soupée.

1751, Mars 21 Monf. [Fourrelle] est entré au soir.

1751, Mars 14 Monf. [Rebelle] est entré au matin.

1751, Avril 23 Monf. [Bataillet] est entré à soupée.

1751, Avril 25 Monf. de [Monturiz] et Monf. son fils
sont entrés à soupée.

1751, Avril 28 Monf. [de Sageigne] est entré à sou-
pée.

1751, Juin 17 Monf. [de Sy —] est entré à diné.

1751, Juillet 20 Monf. [Chevalier negociant d'Orleans] est
entré à soupée.

1751, Juin, 26 Monf. [Clergé control. au presdial de
Langres] est entré à soupée.

1751, Aoust 23 Monf. [de Germanvillier] est entré à sou-
pée, et un ami.

1751, Sept. 2 Monf. [Gozette negociant de Nantz en
Bretagne] est entrée à soupée.

1751, Oct. 8 Monf. Gauault et Monf. [Meallet] sont
entrés à soupée.

1751, Sept. 30 Monf. [le Chevalier] est entré à diné.

1752, Jan. 13 Monf. [Jean Taiffon d'Amsterdam] est en-
tré à soupée.

1752, Fev. 23 Monf. [Bouillerot negociant à Troye et
Monf. Poupon prieur curé de St. Denis de
Troye] sont entrés à soupée.

1752, Dec. 16 Monf. [Fauquet marchand d'Amsterdam]
est entré à diné.

1752, Avril 14 Monf. [de Hanche seigneur du Guy près
Chalons] est entré à soupée.

1752, Avril 17 Monf. [Racine capitaine au regiment de
Touraine] est entré à soupée.

1752, May 2 Monf. [Tassin] est entré à diné.
7 Monf. est parti après diné, cinq jours et
demi.

Avril 20 Monf. [Moreau, directeur des aydes de
Jouinville] est entré à soupée.

1752, — 16 Monf. [Bensing capitaine au regiment de
Britain, battalion du Prince Badendundat,
Hollande, est entré à soupée.]

1752, Juillet 11 Monf. [Maneville negociant d'Orleans] est
entré à soupée.
17 Monf. est parti au matin, cinq jours et
demi.

Juillet 29 Monf. [du Fresne est entré à diné]

1752, Juillet 19 Monf. [Hugne negociant de Marseille.] est
entré à soupée.

Juillet 28 Messrs. [de Sens de Montpellier] sont en-
trés à soupée.

1752, Aoust 4 Monf. [Dauplin] est entré à diné.

1752, Juillet 5 Monf. [Finnet] et Mad. son épouse sont
entrés à soupée.

1752, Oct. 9 Monf. [Tiercelet.]

1752, Oct. 23 Monf. [Bidy et Monf. Jacquin] sont en-
trés à soupée.

1752, Sept. 12 Monf. [Ray negociant de Lyon] est entré à
soupée.

1752, Oct. 27 Monf. [Pincina] est entré à soupée, et
un cheval.

1752, Nov. 9 Monf. [Charoais]

1752, Nov. 11 Monf. Huet et Monf. [Berthelin] sont en-
trés à soupée.

1752, — — Monf. [Renard et Monf. Tournon] sont
entrés à soupée.

1753, Janv. 13 Monf. [Habours] est entré à soupée.

1753, May 29 Monf. [Jacque Menville] est entré à
soupée.

1753, Aoust 5 Messrs. [Supligeau de Tours] sont entrés
à soupée.

1753, Samedi 13 Monf. [— Hortoman] est entré à
diné.

1753, Dec. 26 Monf. [Tittier] — des chevaux le-
gers de la garde du Roi est entré à
soupée.

Nov. 11 Monf. [Paulin] est entré.

1754, Janv. 6 Monf. [Tribert] est entré au matin.

Janv. 6 Monf. [de la Haye] est entré à diné.

Janv. 11 Monf. [Bailly]

Fev. — Mad. [Leury] est entrée au soir.

Mars 19 Monf. [Mayrin] est entré à soupée.

Avril 25 Monf. [de Verneuil] est entré à diné.

Mars 20 Monf. [Stephan negociant de la Haye en
Hollande] a loué sa chambre à quinze
livres par mois.

May 4 Monf. est entré à soupée. [Monf. le Poge.]

Juin 4 Monf. [Perrier de Rotterdam] est entré
au soir.

1754, May 30 Messrs. [— Schyres, Van Erselle, Poictet,
et Eschepres,] sont entrés à diné.

N U M B E R X V.

PERSONS in the *livre de depense* of Godfroy, for the years 1747 and 1748, whose names are not to be found in his *livre de l'inspecteur*.

1747, Fev. 22	M O N S. — est entré à diné.	* 1748, Mars 20	Messrs. — font entrés à diné, et trois domestiques.
— 27	Monf. — font entrés à diné.	Avril 8	Monf. — est entré à soupée.
Mars 16	Monf. de Choissin est entré à soupée, Mad. et Mademoiselle sa fille, et trois domestiques.	Avril 22	Monf. et Mad Terion font entrés à soupée.
20	Monf. — est entré à diné, et un garçon.	Juin 6	Monf. Nogentel est entré à soupée.
Mars 26	Monf. de Jonquer est entré à diné.	Mars 30	Monf. Boitel est entré à diné, et deux garçons.
Mars 28	Monf. — est entré à diné, Monf. son fils, un garçon.	Mars 28	Messrs. de Mousson et — font entrés à soupée.
Mars 29	Monf. Boiteff est entré à diné et deux domestiques.	Avril 11	Monf. Boitel est entré à soupée, et un garçon.
Mars 7	Monf. — est entré à soupée, et une demoiselle.	Avril 19	Monf. de Rouvrois est entré à soupée.
Avril 17	Monf. de Veaucourt est entré à soupée.	Juin 3	Monf. du Fresno est entré à soupée, et son neveu.
Juin 27	Monf. — font entrés à soupée et une femme de chambre.	Avril 30	Monf. de Charançay est entré à soupée, et un garçon.
Juillet 3	Monf. — est entré à diné.	May 9	Monf. Dorigny est entré à soupée et Mad. son épouse.
May 10	Monf. — est entré à soupée.	May 20	Monf. — est entré à diné.
May 5	Monf. Perrier, Mad. son épouse, une femme de chambre, et un garçon à soupée.	Juin 19	Monf. Dejardin est entré à soupée.
May 19	Mad. Delomel est entré à soupée, et une fille.	Juin 30	Monf. Boitel est entré à soupée, deux garçons et deux chevaux.
May 5	Monf. — est entré à soupée.	May 6	Monf. — est entré à soupée.
May 8	Monf. — est entré à soupée.	Juin 7	Monf. — est entré à soupée.
May 11	Mad. — font entrées à soupée et une femme de chambre.	Juin 21	Monf. Descourbons est entré à soupée.
Juillet 29	Monf. Jaron est entré à diné.	Juillet 27	Messrs. Jambert est entré à soupée.
May 6	Monf. de Valcourt est entré à diné.	Aoust 12	Monf. — est entré à diné.
Juillet 16	Monf. Gault et Monf. de Corbons font entrés à diné.	Aoust 15	Monf. Rhénard est entré à soupée.
Aoust 8	Monf. — est entré à soupée.	* JUIL. 4	M O N S. — S O N T E N T R E S A S O U P E E.
Juillet 25	Monf. de Germain-Villier est entré à diné.	Aoust 9	Monf. — est entré à soupée, et Mademoiselle sa sœur,
Aoust 11	Monf. Girault est entré à diné.	Aoust 8	Monf. Stuart est entré à soupée.
Aoust 10	Monf. Camusat est entré à soupée.	Aoust 18	Monf. Petrus notaire de St. Quentin est entré à diné.
Oct. 18	Monf. de Melun est entré à diné.	Sept. 9	Monf. Serpe, et Mad. son épouse font entrés à diné, et un garçon.
Sept. 20	Monf. de Ninchatel est entré à soupée et un garçon.	Juillet 22	Monf. — est entré.
Sept. 27	Monf. — est entré à soupée, et un garçon.	Aoust 15	Monf. Leancourt et Monf. Turpin font entrés à diné.
Oct. 25	Monf. — font entrés à soupée, et deux domestiques.	Sept. 23	Monf. l'Abbe Peir est entré à soupée.
Oct. 14	Monf. Polonceau est entré à soupée.	Juillet 22	Monf. — est entré à soupée.
Dec. 26	Monf. — est entré à soupée.	Aoust 28	Monf. Lenen et Mad. de Pecheur font entrés à soupée.
1748, Jan. 14	Monf. Guignard est entré à soupée.	Aoust 17	Monf. — et Monf. — son gouverneur, et un garçon font entrés à diné.
Jan. 18	Monf. Houffil receveur du tabac est entré à soupée, et un garçon.	— 28	Monf. — est entré à soupée, et un domestique.
Jan. 29	Monf. — est entré à soupée, et un cheval.	Sept. 22	Monf. de Villet et Messrs. ses neveux font entrés.
Fev. 15	Monf. Desjardin.	Aoust 4	Monf. et Mad. Terion font entrés à soupée.
Fev. 24	Monf. — est entré à soupée.	Aoust 30	Monf. — est entré à soupée.
Fev. 27	Monf. de Valcourt est entré à soupée.	Sept. 2	Monf. Reard est entré à soupée et Monf. son fils.
Fev. 6	Monf. Duboudry est entré à diné.		
Avril 10	Messrs. — font entrés à diné, et deux domestiques.		
Fev. 14	Monf. de la Porte, marchand à Croyes, est entré à diné, et un garçon.		

1748, Sept.

* The Account pretended to apply to Sir John Stewart, Lady Jane, &c.

1748, Sept. 23	Monf. Cousin est entré à soupée, et un cheval.	1748, Sept. 27	Monf. Roger est entré à soupée.
Sept. 25	Monf. — est entré à soupée, et un cheval.	Oct. 3	Monf. — est entré à diné.
Oct. 23	Monf. — est entré à diné.	Oct. 7	Monf. — officier au regiment d'Orléans cavalerie.
Sept. 24	Monf. l'Abbe de Longuet est entré à soupée.	Nov. 23	Monf. de la Grange est entré à soupée.
		Nov. 28	Monf. Gand de Languedoc.
		Dec. 13	Monf. Dechamps est entré à soupée.

IN the second Book, which was current at the same time with the former.

Mars 27	Monf. de la Buthotrie est entré à soupée.	May 6	Monf. Maigret.
		Aoust 11	Monf. de la Bouhoterie a soupé.

NUMBER XVI.

PERSONS in Godfroy's *livre de l'inspecteur*, for the Years 1747, 1748, and 1749, not contained in either of his *livres de depense* for these years.

1747, Fev. 22	M ONS. l'Abastide, capitaine de milice au premier battalion de Paris de la ville d'Avignon.	1748, May 12	Monf. Wright, marchand de Londre.
Fev. 27	Jean Pierre Borrekens, marchand d'Anvers.	JUIL. 7	MONS. STEWART, GENTIL-HOMME ECOSSOIS, ET MAD. SON EPOUSE.
	Monf. Paul Vandermier, Abbe d'Anvers.	Aug. 8	Monf. Bancarelle, marchand de Rouen, et Mademoiselle sa soeur.
Mars 17	Monf. de Pommery au presdial de St. Quintin.	1749, Fev. 4	Monf. Boites, marechal des logis de chez le Roi.
Avril 8	Monf. et Mad. de Vauprelle d'Anvers.	Mars 3	Monf. le Chevalier des Haules, capitaine du regiment de la Tour.
Avril 14	Monf. Boufflers, marchand d'Aumals.	— —	Monf. Descourbons procureur du Roi.
May 5	Monf. de Reigenberry de Mayence.	Mars 17	Monf. Simon — de Rouen.
Juillet 3	Le Sieur de Sarrafin Seigneur de Germain-Villier en Lorrain.	— —	Monf. Gublin, Lieutenant au regiment Duluc d'Aix en Provence.
Sept. 28	Monf. Sprecher, Major du regiment de Plantin, Suisse, en Hollande, prisonier de guerre de Bruxelles.	Avril 28	Monf. de Vert, Gentilhomme provincial d'Arles.
Oct. 6	Monf. Gau, marchand de Trois.	— —	Messrs. Clignot et Mopinot, Bourgeois de Reims.
Oct. 22	Monf. Cremot, lieutenant au regiment du Prince Camille.	Juin 23	Monf. de Launois, garde du corps du Roi, chevalier de St. Louis.
— —	Monf. de Sauguac lieutenant au dit regiment.	Juillet 1	Monf. Henin — de France, de Charleville.
Dec. 26.	Monf. de Maninie Bourgeois de Paris.	— —	Monf. le chevalier de Haulle, lieutenant du regiment d'Anguin.
Fev. 3	Monf. Foulliet, marchand de Fountainbleau.	— 15	Monf. Courard, capitaine de vaisseau du Roi.
Fev. 7	Monf. de Lantage, capitaine au regiment de Rouergne, en garnison à Callette.	Sept. 19	Messrs. Latier, freres negociants d'Orleans.
Avril 2	Monf. de Montfroy Avocat de Valon en Bourgoigne.	Nov. 8	Monf. Dumoulin, marchand de Chauny.
— —	Monf. Huguet, Seigneur d'Estaulle, près d'Avalon.	Dec. 12	Monf. Hunaine, seigneur de Viennelle, demeurant au forges de Clairveau.
May 6	Monf. de Sene, avocat d'Arras.		

N U M B E R XVIII.

C O P Y Accompts of Mad. Godfroy's Hand-writing on two loose pieces of paper, found in Godfroy's Book.

N. B. The three following Accompts are wrote on one of the pieces of paper, which has the appearance of having been a leaf of a book.

I.			II.		
	liv.	sols den.		liv.	sols den.
D U Soie,	0	2	P AIN,	4	0 0
Carotes,	0	3	Soie,	0	2 0
Des pois,	1	16	Poulets,	2	2 0
Tourte,	1	5	Macrots,	1	4 0
Petits-pâtés,	0	17	Beurre,	0	17 0
Artichaux,	1	10	Pois,	1	4 0
Fraîses,	1	4	Crème,	0	14 0
Du Beurre,	0	18	Pois,	0	18 0
Poularde,	2	10	Port de lettre,	0	5 0
Poulets,	1	4	Fromage,	0	4 0
Pigeons,	0	18	Echaudés,	0	7 6
Quartier d'agneau,	1	15			
Port de Lettres,	0	19			
Macrots,	2	8			
Champignon,	0	4			
Fromage,	0	4			
Pois,	0	18			
Echaudés,	0	7			
Crème,	1	0			
	20	13			

ACCOMPT on the other piece of loose paper.

	liv.	sols den.		liv.	sols den.
E CHAUDÉS,	0	3	Six œufs,	1	12 3
Poulets,	1	4	Moutarde,	0	4 0
Champignon,	0	4	Verjus,	0	1 6
Perfil et aboule;	0	9		0	2 0
	1	12		1	19 9

N U M B E R XIX.

LETTER from Sir JOHN STEWART to Mr. M'EWAN.

Dear Sir,

I CANNOT easily express how lucky my son and I have been in such a friend as you have proved all along, but particularly of late, that his affairs have taken such a turn. I hope by your indefatigable care and skill in business, he is by this time tolerably easy. You will see by the inclosed, how anxious I am to have my dear little man with me. I beg, should he make any difficulty, you may remove it, he can have the advantage of learning the language and exercises at no expence, besides making me happy in having him under my eye; if he is in straits where can he live so well? if not, what better way of saving money than in being with good company, who are fond of him, at no expence?

Mrs. Hewit has received both Mr. Colvill's letters, one with a kind of postscript from my son to me; she is to write soon. Continue your kindness and good advices to my dearest boy, all which are treasured up in the grateful mind of, Sir, your most obliged friend and most humble Servant,

Reims, July 10th, 1748.

(signed) JO. STEWART.

Addressed to Mr. William M'EWAN, Writer to the Signet in Edinburgh, Scotland, par Londres.

S

OBSERVATIONS

N U M B E R XX.

OBSERVATIONS

RELATIVE TO THE
CONDUCT OF AGENTS.

THE management of the proof, and enquiries in France, on the part of the defender, was from the beginning superintended by gentlemen of the law, sent on purpose from this country; and after the cause had gone some length, Mr. Mackonochie was sent over to assist them in the way of his business, as an agent or writer.—As the characters of all the gentlemen, thus employed, are well known in this country, and will not be called in question, so the pursuers themselves must be satisfied, that the conduct of all and each of them, in the course of the enquiries, proofs, and other operations in France, was perfectly unexceptionable.—Insinuations, however, to the contrary, were in two or three instances thrown out in the pleading, which makes it necessary for the defender to explain the facts alluded to, though he has reason to believe, that the same accusation will not be repeated in the memorial.

First article
of accusation
against defen-
der's agents.

Def. pr. 658,
E.

Parf. pr.
438 A.

610.
1018, H.

1056, D.

1mo, It was observed, that Monsieur Lorette, a witness adduced for the defender, had been employed by his agents to insinuate himself into the good graces of Madame Mignon, and to report what she said: that, when examined on this fact, he had expressly swore, that he never gave any account, by word or writing, to any person, of what he had learned from time to time, and that he had never wrote, or caused write, any note about this affair, nor was intreated or invited by any person to make enquiries on the part of the defender: that the pursuers had offered to prove the contrary of this, by the oaths of Mr. Mackonochie, and of Mr. Guilemin, an officer of police, employed for the defender, but that these gentlemen had declined answering the questions put to them, which showed that the fact alleged was true; and that accordingly, Mr. Mackonochie having afterwards been examined by appointment of the court, made answer as follows: “ Depones, that about the end of harvest 1763, Mr. Guilemin, secretary to the lieutenant-general of the police, was employed

" ployed by those acting for the defender at Paris, and that Mr.
 " Guilemin reported to the deponent, from time to time, the disco-
 " veries he had made; and, amongst others, did inform him, that he
 " had learned from some persons of good character, that Madame
 " Mignon had said, promises had been made to her on the part of the
 " pursuers: that, as Mr. Guilemin, at the same time, told the depo-
 " nent, that the information he had got might be depended on, the
 " deponent neither asked the names of the persons from whom he
 " had had the information, nor how he got it, only from his inform-
 " ing him of the particulars which Mr. Lorette has since deposed to,
 " he does believe the information thereanent was from Mr. Lorette;
 " but whether Mr. Lorette gave this information to Mr. Guilemin by
 " word of mouth or by writ, the deponent cannot with certainty say;
 " only he remembers, that at one particular time, Mr. Guilemin
 " showed the deponent a letter, mentioning the substance of a conver-
 " sation with Madame Mignon, which the deponent believes, from its
 " contents, was from Mr. Lorette, though the subscription was taken
 " from it before the deponent saw it. Depones, that this letter was
 " addressed to Mr. Guilemin, and was delivered by Mr. Guilemin to
 " the deponent, and remained for some time in his possession; but
 " whether or not he returned it to Mr. Guilemin, he does not know,
 " but shall make a search to see if it be in his possession, and if it is,
 " shall produce it: that Mr. Guilemin never informed the deponent,
 " that the said letter was wrote by Mr. Lorette, nor did he say by
 " whom it was wrote; nor did the deponent ever ask, only believes it
 " was from him, for the reasons already mentioned. Depones, that
 " the deponent has sundry times, since the examination of Mr. Lorette,
 " asked both him and Mr. Guilemin, whether Mr. Guilemin had
 " employed Lorette on the part of the defender? and they have both
 " as often assured the deponent, that he was no otherways employed
 " by Mr. Guilemin, than that, upon Lorette's occasionally telling him
 " at the police, that the affair of the enlevement of Mignon's chil-
 " dren made a good deal of noise in the Fauxbourg St. Antoine, Mr.
 " Guilemin desired him to inform him (Guilemin) of any particulars
 " he might hear: and Mr. Guilemin assured the deponent, that at
 " this time he did not inform Mr. Lorette, of his (Mr. Guilemin's)
 " being employed by either party, and that in fact, he (Lorette) ne-
 " ver did, to the deponent's knowledge, do the least thing for the
 " defender, other than inform Mr. Guilemin of what Madame Mignon
 " told him."

From this deposition, which the pursuers have referred to, it appears, Answer.
 that Mr. Lorette never was employed as an agent for the defender, or
 as a spy upon the family of Mignon.—The true fact is, that Mr. Guile-
min,

min, who, at that time, was not known to be employed for the defender, happened occasionally to say to Mr. Lorette, the inspector of police for the quarter in which Mignon lived, that he would be glad to be informed of what was passing in his district, concerning the revelations made by Mignon and his wife, of the loss of their child.—Mr. Lorette had opportunities of seeing Mignon and his wife, and of hearing them converse upon the subject; and it would seem that he repeated to Mr. Guilemin what he had thus heard, without knowing that Guilemin was, in any shape, employed in, or connected with, the cause.—Mr. Guilemin afterwards suggested to Mr. Mackonochie, to put this Mr. Lorette into the list of witnesses, and told him the facts which would be proved by him. Mr. Mackonochie saw Lorette himself, for the first time, in the middle of October 1764, some weeks before his examination; and Lorette has deposed, “That he then related “to Mr. Mackonochie every thing he knew about this affair, after Mr. Mackonochie had asked him what he knew of it.”—Whether Mr. Lorette had conveyed his intelligence to Mr. Guilemin by word of mouth, or by letter, does not clearly appear, tho’ Mr. Mackonochie seems rather to be of opinion, that it was by a letter which he saw in Mr. Guilemin’s hands; but whatever may have been the fact as to this, it seems plain, that Mr. Lorette, when he afterwards deposed, that he never communicated to any person what he knew by word or writ, has misunderstood the question; for the after-part of his own deposition expressly sets forth, that he had communicated what he knew to Mr. Mackonochie in the Month of October; and, indeed, had there not been a communication of some kind or other, he never would have been examined.—All, therefore, that the witness can possibly have meant is, that he was not an agent for the defender, and did not render an account to any person as such.—He is a person of unexceptionable character.—The other facts related by him are confirmed by the proof, and it is impossible he could have any scheme in disguising this fact, of communicating or not communicating his intelligence.

As to Mr. Guilemin and Mr. Mackonochie’s refusing to answer the questions put to them, Mr. Mackonochie, in December 1764, when he observed Mr. Guilemin’s name, in the list of witnesses, wrote to Mr. Brown, the defender’s agent at Edinburgh, and to Mr. Gordon, his solicitor at London, desiring to know how far agents could be examined, and what questions were competent to be put to them.—In answer to which, both Mr. Brown and Mr. Gordon wrote, that Mr. Guilemin having been employed as an agent for the defender, could not be adduced, except as to facts prior to the commencement of the action.—Thus matters lay over, nor did the pursuers desire to have
Mr.

Mr. Guilemin examined, till April 1765, when, being obliged to give in their interrogatories to the whole witnesses they intended to examine, they put in some interrogatories for Messieurs Guilemin and Mackonochie ; and, in the end of May, when the proof at Paris was finished, they proposed to examine Mr. Guilemin.—Mr. Mackonochie objected to the questions as incompetent, agreeable to the advice he had received in the above letters.—At the same time he told Mr. Stuart, the person acting for the pursuers, that, as the summer-session was then about to sit down, he ought to apply to the court for having the relevancy of these questions tried ; he also told him, that he had sent the interrogatories to Scotland for advice of the defender's council, and that, if either the council in that country should agree, or the court of session should find, that the examination was competent, Mr. Guilemin should be presented, in order to his examination, after the Aix-la-Chapelle proof was finished.—This proposal seemed reasonable, more especially as the parties were to return, at any rate, to Paris, in order to get inspection of the books ; but it would seem the pursuers did not think it advisable to apply about this matter to the court of session, and Mr. Mackonochie received a letter from Mr. Brown, dated 14th June 1765, acquainting him, that Mr. Solicitor Montgomery was of opinion, that the whole interrogatories to Mr. Guilemin were incompetent.

This letter was shown to Mr. Stuart at Aix ; and the defender's agents abroad did not imagine that the examination would be further insisted in.—Sundry petitions were offered to the court in summer 1765, with respect to the competency of questions to witnesses, but without any mention of this difficulty, which had occurred with regard to Messieurs Guilemin and Mackonochie.—In the month of August, however, when the agents for the different parties were about to leave France, the pursuers insisted, that Messieurs Guilemin and Mackonochie should be examined upon the questions in dispute, or, at least, that they should say, in writing, that they did not choose to answer them.—This last was accordingly done, and the proof reported.

In spring 1766, the pursuers applied to the court for Mr. Mackonochie's examination upon sundry particulars, mentioned in their petition, but not a word said concerning the questions formerly proposed, and which had been refused to be answered.—In the pleading, however, in July last, the council for the pursuers took the liberty of blaming the conduct of Mr. Mackonochie in this particular ; and they founded on his refusal to answer the questions, as an avowal of the facts contained in them.—Nothing could be more unjust than this method of proceeding.—The council for the defender immediately con-

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sented,

sented, and desired of your Lordships, that Mr. Mackonochie should be examined, which he was accordingly, and it is this deposition which has already been recited.

Article 2d.

It was, in the next place, objected, that the defender's agents had employed low people and Jesuits, &c. as spies upon the family of Mignon, and that these people, some of whom had only heard conversations in cabarets, in the midst of noise and drinking, had afterwards been adduced as witnesses in the affair of Mignon.

The defender's agents had the best reasons for believing that the story, as told by the Mignon witnesses, was in many particulars false, and it was their duty to endeavour, if possible, to investigate the truth.—In this view there was certainly no harm in employing persons to make enquiries in the most prudent manner, and even to converse with the Mignon witnesses themselves, in order to learn circumstances from them, and what methods had been used to influence them.—Mr. Huber, a person employed under the police, and who had been recommended as a very honest man, and Mr. Popselle wright, and Mr. de la Rue shoemaker, both of them near neighbours of Mignon, were employed, by order of the defender's council then in France, to procure what intelligence they could, with respect to the Mignon story, which they accordingly did, and as they appear to have had opportunities of meeting with Mignon and his wife in a cabaret, mentioned by them, your Lordships have evidence of a variety of particulars relative to the affair, not only from Popselle and La Rue, two of the persons employed, but from six or eight other witnesses, quite unconnected with the defender, or with the cause, who, at different times, had occasion to converse with the Mignon family, or to hear the particulars which they have related in their oaths.—Popselle and La Rue were indeed of the congregation of Jesuits, i. e. they frequented the churches where Jesuits preached, but it would be absurd to suppose that this circumstance which was unknown to the defender's agents at the time, can have the effect to throw any discredit upon them.—They, as well as all the other witnesses on this head, are reputable burghers, and persons of undoubted good character.—Neither is it true, that there was any riot or intoxication, when these conversations were held, and it will be observed, that their oaths, in one of the material facts deposed to by them, with regard to the papers and memorials which had been put into Madame Mignon's hands, are supported and put beyond doubt, by production of the papers themselves.

Article 3d.

A third particular noticed was, an alledged attempt made by one of the under-agents of the defender to practise upon Madame La Brun, an inn-keeper at St. Germain.

The

The fact, with regard to it, is this: The defender's agents having been informed, in October 1764, that this Madame La Brun had lived some years in Paris, rue de Seine, Fauxbourg St. Germain, Mr. Huber was sent to enquire if she had any knowledge of the facts in dispute.—Mr. Huber, upon his return, reported, that she had no knowledge, personally, of any of the facts in dispute; but that she had lived several years in the same stair with one Madame Fontaine, a midwife, who had often told her, that about sixteen years ago a foreign Lady had been brought-to-bed of twins in the house of a Madame La Brun, and, as she believed, by a person called La Marre.—This appeared to be of some importance, and Madame Fontaine, who was then alive, but very old, was immediately applied to.—But Madame Fontaine refused absolutely to give any light into the matter, as appears from the oath of Mr. Mackonochie, whom the pursuers thought proper to examine as a witness upon this matter.—The questions put to him concerning it were these: “ Does it consist with your knowledge, that Ma-
 “ dame Fontaine, sage femme, mentioned in the depositions of Mon-
 “ sieur and Madame La Brun, of St. Germain, and in the depositions
 “ of others of the witnesses, was alive for a considerable time after
 “ the commencement of the proof at Paris; and that she died only in
 “ the course of last winter, after having been frequently visited by
 “ persons on behalf of the defender? Does it consist with your know-
 “ ledge, that, in her conversation with those on behalf of the defen-
 “ der, she never pretended to have assisted Lady Jane Douglas at her
 “ delivery, or to have lodged her in her house, or to have had any
 “ knowledge, either of Lady Jane Douglas or her husband, or either
 “ of their children, or of any particulars in relation to them or the
 “ said delivery? During the life of the said Madame Fontaine, was
 “ her name ever inserted in any list delivered to the pursuers, concern-
 “ ing witnesses to be examined on the part of the defender? Or did
 “ you ever, until after her death, mention her name to any person on
 “ the part of the pursuers?—In answer to the eighteenth, nineteenth,
 “ and twentieth questions, depones, That when he was informed of
 “ the circumstances mentioned by Madame La Brun at St. Germain en
 “ Laye, as to her having been informed by Madame Fontaine that a
 “ stranger lady had been delivered of twins, about sixteen years ago,
 “ in the house of one Madame La Brun, and, as she thought, by one
 “ La Marre, he sent to converse with Madame Fontaine thereon, and
 “ to inform her what Madame La Brun at St. Germain had said, and to
 “ ask her what she remembered thereof; to which the deponent was
 “ told, that the said Madame Fontaine was very old and infirm; that she
 “ said she would not communicate to any person what she knew of that
 “ matter; that people of her profession ought to be discreet; and that
 “ they

Purf. pr.
 * 49. * B.
 —440, C.

“ they made oath not to communicate things of that nature, especially
 “ when the accoucheur is not privilégié: That upon this the deponent
 “ desired sundry different people to speak to her, and particularly one
 “ of her own profession, in order to remove her scruples, to whom she
 “ gave the same answer, and refused to say positively whether she had
 “ knowledge of the circumstances mentioned by Madame La Brun, or
 “ not. And, lastly, the deponent desired Mr. Guilemin to cause her
 “ confessor speak to her, in order to remove the scruples she had on
 “ account of her oath of secrecy; and when Mr. Guilemin waited on
 “ the confessor for this purpose, he informed him she had died the day
 “ before: So that her name neither was, nor could be, in any list of
 “ witnesses, and no mention was made of her by the deponent to those
 “ acting for the pursuers; and the circumstance, mentioned by Ma-
 “ dame La Brun at St. Germain, was only known to those acting for
 “ the defender, a very few weeks before the death of Madame Fontaine.
 “ Depones, that the deponent never saw the said Madame Fontaine
 “ himself.”

Being thus deprived of the evidence of Fontaine, it was thought
 proper to adduce La Brun, in order that she might give an account of
 what she had been told by Fontaine; and, before her examination,
 two of the Scots council then in France went to St. Germain, and de-
 sired to know, from her own mouth, whether the facts were true, as
 reported by Huber.—This she assured them to be the case.—She was
 then put into the defender's list of witnesses; and Messrs. Guilemin
 and Mackonchie having afterwards gone to St. Germain, to desire her
 to come to Paris to be examined, she again, in their presence, and in
 presence of two indifferent persons of character, repeated what she had
 formerly said, and protested, in the most solemn manner, that every
 syllable of it was true, and that she would depose it.

When adduced as a witness, she told a story altogether different
 from that which she had on so many repeated occasions related to the
 council and agents of the defender.—Depones, “ That when she lived
 “ in the street de Seine, she knew one Madame Fontaine, a midwife,
 “ who lived in the same house and in the same stair with the depo-
 “ nent; that she has no idea that the said Madame Fontaine, who came
 “ frequently enough to the deponent's house, spoke to her of one La
 “ Marre, a man-midwife; but that she heard of the said Mr. La Marre,
 “ from a gentleman who came to her, the deponent, about two or
 “ three months ago, to ask her questions on the part of the defender,
 “ with respect to this affair; and that this gentleman had the air of a
 “ messenger or a man of business, (*ou d'un homme d'affaires*). Depones,
 “ that she remembers, that about the year 1755, La Dame Fontaine
 “ told her, that enquiries had been made for a long time with respect

“ to

" to an English lady, who was said to have been brought-to-bed at
 " Paris of twins; that enquiries had been made at her and elsewhere;
 " and that, notwithstanding these enquiries, the fact could not be dis-
 " covered. Depones, that the said Dame Fontaine did not tell the
 " deponent with whom it was said this lady had been brought-to-bed;
 " that she, Fontaine, did not know herself, nor did say to the depo-
 " nent by whom the lady had been brought-to-bed. Depones, that
 " she, the said Fontaine, then told the deponent, and has sundry times
 " repeated it since, that these searches had been made several years be-
 " fore that. Depones, that she has an idea that La Dame Fontaine had
 " also told her, that she, Fontaine, had been told that the keeper, with
 " whom that stranger lady had been brought-to-bed, had got fifty or
 " one hundred louis d'ors of reward, and the man-midwife as much."

In a subsequent part of the oath, she says, That she never heard that Def. pr. 547,
D.
 the stranger lady was brought-to-bed in the house of a La Brun, till
 she was told it by the person who came to put questions to her some
 months before.—And, upon an interrogatory for the pursuers, de- —547, F.
 pones, " That the gentleman who came to see her at St. Germain, as
 " above mentioned, asked at her, the deponent, if it was she herself
 " who had lived in the street de Seine, in the same house with Ma-
 " dame Fontaine? and, if it was also she, the deponent, who was the
 " keeper with whom said lady was brought-to-bed; adding, that this
 " stranger lady was lately dead, and had left ten thousand livres
 " to Madame Le Brun her keeper: that he had the money, provided it
 " was proved to him who was the person that had been the keeper: to
 " which the deponent answered, that it was not her. Depones, that the
 " gentleman who spoke thus to her came upon a hired horse: that he
 " was dressed in a white riding-coat, appeared to be from forty to forty-
 " five years of age. Depones, that this gentleman told her, the depo-
 " nent, he had seen the said Madame Fontaine about this affair, and
 " sundry persons of her, the deponent's acquaintance, whom he
 " named to her. Depones, that about six weeks ago, there came to
 " her, the deponent, at St. Germain-en-Laye, three gentlemen, to ask
 " her questions about this affair: that, Sunday last, Mr. Mackonochie,
 " (here present) and three other persons with him, also came there
 " to know the day when she would be examined; and that before
 " yesterday, Messieurs Stuart and Nairn (here present also) came to her
 " house to ask her questions anent this affair; and that this was the
 " only time she has seen them."

The gentlemen employed for the defender were not a little surprised
 at this woman's deposition; and, in order to try her a little further,
 she was interrogated, " if she had always told this affair in an uni-
 " form manner to the persons who put questions to her? to which she
 U. " made

Def. pr. 547, made answer, as follows: depones, "That she has always explained herself on this subject in an uniform manner, as far as she can remember, but that not being able to recollect the detail of all the conversations which she has had upon this subject, if she mistook herself in some things in these conversations, what she has at present said upon oath is the pure truth." This part of her oath last recited stands disproved by the evidence of two persons of character, Mr. Valfort and Madame Le Fevre, both of them unconnected with the cause, who happened to be present when she had the above conversation with Messieurs Guilemin and Mackonochie.—The whole gentlemen employed for the defender knew it to be notoriously false, and Mr. Huber has constantly affirmed, that another part of the oath respecting insinuations about money, and suggesting facts to her, if meant to apply to him, was absolutely without foundation, and that she must have been prevailed on in some shape or other to invent these falsehoods, in order to hurt the defender.—These affirmations of Mr. Huber are not indeed legal evidence of the fact; but there is legal evidence that she has sworn a falsehood *in one particular*, which therefore throws a discredit on the whole, and intitles the defender to presume that unfair methods have been used with her.

Article 4th.

Def. pr. 601,
F.

Purf. pr.
1031, C.

Def. pr. 601,
F.

Answer.

Letter Mr.
Duchatel to
Mr. Andrew
Stuart.

Def. pr. 597,
F.

In the next place, it was insinuated, that the nurse Mangin had received favours from those acting for the defender, and was under influence, particularly, that the Dutchess of Douglas's chamber-maid had given her a short-coat and petticoat of linen, when she was almost naked, as appears from her own deposition, and that she and her husband had further received charity from her curé, which had been furnished by the Abbé Colbert, a person acting for the defender, as appeared from the curé's certificate, though Mangin herself had deponed, "that she had not received any charity from her curé, Dean of Pouilly, nor from any body else."

That this witness could be under no influence of the defender, when she was first discovered and examined at Reims, upon a commission from the Tournelle, at the instance of the pursuers, is extremely certain, because, from evidence in process, it appears that she was examined in the beginning of the year 1763, at a time when those acting for the defender had but just arrived in France, and had not seen any one witness who did not live in Paris. In her after deposition, upon the commission of the court of session, she has, among other things, said, "that, in her deposition before the lieutenant criminelle, she said as much with respect to the two miscarriages, as above deponed to. Depones, that the lieutenant criminelle told her, when she deponed, that Madam Stewart was fifty years old; to which the deponent answered, that Madam Stewart did not appear to be more than forty. Depones, that she does not remember in what year she was examined

“ examined before the criminal lieutenant, but she remembers only
 “ that it was in the winter, because it was then very cold, and that,
 “ before that time, she had not been interrogated by any body upon
 “ this affair, not knowing, even until her deposition, what was the
 “ matter in question.”

Mr. d'Anjou, in his paper entituled, *Extrait de la procedure extraordinaire*, in treating of this woman's deposition in the Tournelle, says,
 “ she has given a bad deposition upon the age of the child, and of the
 “ miscarriage.”—And, in general, the pursuers know extremely well,
 that her deposition in the Tournelle was just as unfavourable to them
 as her after-deposition in the cause.

As to her having received favours, the fact is, that when she was
 first traced out in May 1763, by the agents for the defender, her husband
 and she were in such a miserable situation, that they were almost
 perfectly naked, and at the point of starving. The husband had, for
 some time, laboured under a severe illness, which ended soon after in
 his death; and, for that reason, the defender will not disown, that the
 charity given by the Abbé Colbert to the curé de Pouilly, was in part
 intended to put it in the curé's power to do something for the poor
 man, so as to keep soul and body together till such time as he was ex-
 amined: And accordingly it appears, that the curé bestowed part of it
 in that way, as long as the man lived, but without the least explana-
 tion or hint to him from whence the charity came.—The curé's certi-
 ficate is in these words: “ I, the under-signed Henry Billet, priest,
 “ curate of Pouilly, Doyen rural, of Mouzon Meuze, certify, that Purs. pr.
1031, C.
 “ knowing, by my own eyes, the miserable state of John Mangin,
 “ and of Jean-Joseph Chevalier, his wife, living in my parish since
 “ about four years ago, I thought myself obliged, in quality of curate,
 “ to put them in the rank of two poor people, especially during the
 “ long illness of the said Mangin, of which he died, 4th February
 “ 1764, and during which he had need of greater help: And as, to-
 “ wards the 10th September 1763, I had begged the Abbé de Colbert,
 “ vicar-general of the archbishoprick of Tholouse, whom I had the ho-
 “ nour to be acquainted with, to buy me some books, which I had re-
 “ ceived, with memorandums of the debursments, which amounted
 “ to sixty-three *livres*, which sum I had an order to distribute to the
 “ poor of my parish; and as the state of the said Mangin made him
 “ more worthy of compassion, I thought it my duty to give him the
 “ largest distribution. And this is all that I have to say in the most
 “ exact truth. At Pouilly, the 14th June, 1765.—I certify moreover,
 “ that, since the death of the said Mangin, I have not given any
 “ succours to his widow,”

The woman's deposition, which says, that she received no charity
 from the curé, is strictly true, the fact being, that the charity was
 given

given to her husband, and not a farthing to her after his death, as the curé himself has said.—And as to the giving her a gown or a petticoat to cover her nakedness, which appears to have been done by one of the Dutchess of Douglas's servants, it would be hard, indeed, if an act of humanity, so entirely innocent and proper, should either affect her credibility, or throw any degree of blame on the defender's agents, who were ignorant of the matter.

Art. 5.

Def. pr. 686,
B.

Another circumstance endeavoured to be brought into the proof, on the part of the pursuers, was a pretended offer of two double Louis-d'ors, to a woman called Madame Rouffelle. — Madame Guilliere depones, “ That Madame Rouffelle, midwife in Paris, niece to Mr. Le Brun's first spouse, likewise a midwife, told the deponent and Mr. “ and Madame Le Brun, that several persons had called at her house at “ different times, upon the subject of the delivery of a stranger lady, “ brought-to-bed of twins in the said Madame Le Brun her aunt's house. “ Depones, That the said Madame Rouffelle told them, that amongst “ those persons who had come to her house, one of them had offered “ her two double Louis-d'ors. Depones, That she likewise told them, “ that they had promised to introduce her to a stranger lady, who was “ in town, to see if she would know her to be the same who had been “ brought-to-bed in her aunt's house.—Interrogated for the defender, “ depones, That Madame Rouffelle said, that when they first came to “ her house, they asked her, if she did not know of a stranger lady's “ lying-in of twins in her aunt's house? that she answered, yes: That “ they afterwards asked her, if she would know the lady if she saw her? “ and upon her answering, that she would, they told her, that they “ would introduce her to this lady.” And Madame Le Brun mentions the same fact upon hear-say, from the said Madame Rouffelle.

—688, E.

Answer.

To this it is answered, 1mo, That the witnesses only mention this fact upon the hear-say of a person alive, and living in Paris, whom the pursuers did not think proper to adduce in order to prove it, if true, by her own testimony; and therefore the defender is intitled to say, that it is absolutely false, and that it would have been disproved by Madame Rouffelle herself. 2do, Supposing it had been true, it does not appear from any thing said by the witnesses, whether the person who offered this money, was on the side of the pursuer or on that of the defender. 3tio, In the list of questions proposed to be put to Mr. Guilemin, there were interrogatories relative to this fact, and as it appeared to the defender's people of business, that every fact of this kind, tending to prove unfair practices on the part of the defender, was competent to be proved even by agents, they did expressly agree, that Mr. Guilemin should be examined upon it, as appears from Mr. Guilemin's letter to Mr. Stuart, in these words: “ Mr. Mackonochie

Purs. pr.
1018, H.

“ has

“ has communicated to me the list of questions above, and on the
 “ other side ; upon which he told me, that you proposed to hear me
 “ in deposition ; he added, at the same time, that these questions were
 “ absolutely incompetent, except that which relates to the recompence
 “ pretended to have been promised to a Madame Rouffelle, niece to a
 “ Madame Le Brun, midwife. With regard to me, sir, I never saw
 “ this Dame Rouffelle, and have no knowledge that a recompence was
 “ promised to her by any person on the part of the defender. To return
 “ to the first questions, the only answer which I can make to them is,
 “ that having had the confidence of the defender’s agents, and having
 “ assisted them, I think you have no right to put them to me, and,
 “ consequently, that it is very useless to desire me to depone on this
 “ subject, because I would refuse to answer to any other of these que-
 “ stions, even though I was before the commissioners.” The pursuers,
 however, were not pleased to examine Mr. Guilemin, nor did they ever
 desire to have Mr. Mackonochie, or any other person examined about
 this matter ; and therefore it must be supposed they were thoroughly
 satisfied, that those acting for the defender had no knowledge of any
 such thing, and that no person, on their part, or employed by them,
 had ever made any such offer.

Next, The defender’s agents were blamed for having procured notes Art. 6.
 of the Tournelle depositions in a private manner, and by giving mo-
 ney to one of the clerks or persons employed in that court, when, at
 the same time, they pretended to make an outcry, as if they were kept
 totally in the dark with respect to the proceedings in the Tournelle.

The fact, with regard to this, is explained in a minute which was Answer.
 made out soon after the pleading, in consequence of a demand made
 on the part of the pursuers, before Lord Kennet, ordinary, that these
 notes should be produced.—The minute, after stating sundry ob-
 jections to the production demanded, proceeds in these words : “ That Purs. app.
 “ the pursuers have no title to call for any private writings or notes 1059, L.
 “ which the defender, or his agents, may happen to be possessed of,
 “ and which they have obtained for their own particular information
 “ in the cause. It became a duty incumbent on those acting for the
 “ defender in France, when they came to the knowledge of that dark
 “ and extraordinary proceeding which was carrying on against them
 “ in the Tournelle, to take every method of procuring intelligence
 “ concerning the nature and intention of that proceeding, and, in par-
 “ ticular, to discover what proofs had been taken in it; and accord-
 “ ingly it is acknowledged, that they employed a French gentleman of
 “ business, and of undoubted good character, to enquire into those
 “ operations, and, if possible, to procure to them copies, or at least the
 “ heads or substance of any of the plaintes or depositions in that af-
 “ fair ;

“ fair ; and though it may be true, that this gentleman was obliged
 “ to give money to some person who had access to these plaintes and
 “ depositions, before he could get any intelligence concerning them, it
 “ is impossible that any degree of blame can from thence lie, either
 “ against the gentleman himself, or against the agents for Mr. Dou-
 “ glas, who employed him ; because, without taking some step of this
 “ kind, they never could have come to the knowledge of what was
 “ carried on against him in that mysterious and culpable proceeding ;
 “ and what made it the more necessary to watch the pursuers motions,
 “ and investigate the secret process carried on by them was, that, in the
 “ course of the defender’s enquiries, he soon found, that the witnesses
 “ and others from whom he expected information concerning facts ma-
 “ terial in the cause, were intimidated by the proceedings in the Tour-
 “ nelle, and refused to make answer, for this reason, that the affair
 “ was *en justice réglée*. The agents, therefore, on the part of the de-
 “ fender, would have been wanting in duty to their client, had they
 “ not used every endeavour to come to the knowledge of what was go-
 “ ing on in the Tournelle ; but it does by no means follow, that they
 “ are obliged to communicate their discoveries to the pursuers. It is
 “ true, that, by the judgment of House of Peers, in this cause, the pur-
 “ suers were ordered, *in pœnam* of their unlawful proceedings, to ex-
 “ hibit their private notes and journals, in so far as they contained
 “ any information of the proceedings in the Tournelle ; but no such
 “ order has been pronounced against the defender : and whether the
 “ writings which Mr. Mackonochie is now possessed of be full copies
 “ or abridgments, it does not occur that the pursuers have any right
 “ to the production of them. The judgment of the House of Peers
 “ does expressly prohibit any transmission from the Tournelle ; and the
 “ reason assigned for demanding this exhibition, *viz.* that it may ap-
 “ pear whether Mr. Mackonochie is right or wrong in his conjecture
 “ as to their being imperfect copies, is quite inconclusive ; for, sup-
 “ posing they were now to be produced, neither the court nor the pur-
 “ suers have any *data* before them, upon which it can be determined,
 “ whether Mr. Mackonochie is right or wrong in his conjecture. The
 “ defender shall only add, that it is improper in the pursuers to say,
 “ that, because of these notes which the defender obtained after the
 “ process in the Tournelle had gone a considerable length, he had
 “ more ample information than the pursuers themselves, at whose in-
 “ stance they were carried on. No person of common understanding
 “ will believe, that a party, at whose instance a prosecution was carried
 “ on, can remain in total ignorance of the proceedings in it, even in
 “ France : That Mr. Stuart had access, at least to some of the depo-
 “ sitions, the defender shall only appeal to one single passage of his
 “ journal.

“ journal, which is in these words :—Having desired to know from
 “ M. Mureau, secretaire du rapporteur, what the witnesses at Reims
 “ had said, as to the particular time of Sir John and Lady Jane’s
 “ coming from Reims to Paris, to carry home their second son, and
 “ the particular time of their setting out for England, he turned up
 “ the depositions of Menesson the servant, and of Madame Mayette,
 “ on that head.—From all which it appears, that the pursuers have
 “ no right nor title to call for production of the writings in question.”

The fact is, that the information thus procured by the defender, after the Tournelle action had for a considerable time depended, and many secret operations carried on, was extremely imperfect; and as the pursuers still persisted in these secret and unlawful proceedings, the defender was undoubtedly intitled to make the outcry which he did, as, in fact, he was laid under most unfair disadvantages, by the operations thus carried on against him in France, and which were afterwards severely stigmatized in the courts of Great Britain.

Lastly, It was observed, that the defender had brought Mrs. Stewart Article 7th. of Ardsheel from Bouloign to Paris in winter 1763; that she was in very straitened circumstances, and that, though she was thereafter to be adduced as a witness, she was supplied with money by the defender’s agents; and when the pursuers had adduced Mr. Mackonochie, to ascertain this fact by his oath, he admitted he had lent her money, as alledged by the pursuers, but refused to say to what extent, or whether he took any, or what security, for re-payment of it.

By the 44th article of the pursuers condescendence, given in to your Answer. Lordships in summer 1763, it was offered to be proved, “ That in November 1749 Sir John Stewart and Lady Jane, accompanied by Mrs. Hewit, went again from Reims to Paris, under pretext of bringing from thence the supposed twin-brother of the defender; that, upon their arrival at Paris, they put up at a lodging-house, under the designation of Colonel Stewart, a Scotsman, and his wife, and were in that house on the 19th November 1749.”—And, by article 45th, “ That they left that place, and put up at another house, kept by La Veuve Selle, à la Croix de Fer, rue St. Dennis, where they were on the 21st November.”

After some enquiry, it was believed that the Colonel Stewart who had lodged at the house first above mentioned, was Colonel Stewart of Ardsheel and his wife, and not Sir John and Lady Jane, as alledged by the pursuers.—Mrs. Stewart, who then lived at Bouloign sur mer, sixty leagues from Paris, was wrote to by the defender’s agents, to know if she remembered in what house she had lived when at Paris in November 1749; to which she made answer, that she could not recollect the persons names in whose house she lodged, nor even the street, but that, if she

was

was at Paris, she could go directly to the house. Thus matters remained for some time.—In harvest 1763, the Dutchess of Douglas, with one of her council from Scotland, and Mr. Mackonochie, having, in their way from England to Paris, called for Mrs. Stewart at Bouloign, to know if she had then recollected the house, which she had not.—She informed them at the same time, that she was about to go to Scotland, where she would remain a considerable time, and that she had even taken her passage in a ship to Leith.—The Dutchess and her council intreated her to delay her intended journey to Scotland, till after she had seen the house in which she had lodged, and till she had been examined concerning it.—They at the same time informed her, that she would be wrote to when the time of her examination approached; and that, if the season was then past, when she might have opportunities of going from Bouloign to Leith, her charges would be defrayed, not only to and from Paris, but also to London, from which place she could easily find a conveyance to Scotland.—To this proposal she consented.

Upon the Dutchess's going to Paris, applications were made for a *pareatis* for examining the witnesses, which was obtained, but was afterwards returned by the pursuers, which put an entire stop to the proof for that year; and the defender's Scots council, who had gone to France to attend the proof, returned to this country.

In the month of December that year, Mr. Mackonochie, who still remained in France, and who was informed, by a letter from Mrs. Stewart, that she was immediately to set out for Britain, wrote to her, begging that she would come to Paris, in order to try if she could find out the house in which she had lodged; and desiring her, if she had no money to defray the expence of the journey, to draw upon him, or upon Mr. Foley, the defender's banker.—She came to Paris, on her own charges, without drawing for any money to defray the expence of the journey.—On her arrival at Paris, she immediately went to the house where her husband and she had lodged, and which proved to be the same with that in which it was pretended Sir John and Lady Jane had resided.

Soon after Mrs. Stewart's arrival at Paris, she received advice of the death of her brother in Scotland, whereupon she applied to the Dutchess of Douglas for the loan of some money, to enable her to buy mournings for herself and daughter on that occasion; and Mr. Mackonochie, at her Grace's desire, advanced such sums as were necessary for the mournings, and for her subsistence while in Paris; but as the whole amounted to less than what he thought her intitled to, for the expence of her journey, and other necessary charges, he took no receipt or obligation for what was thus advanced.—Mrs. Stewart probably thought

thought herself indebted, at the time, for the sum advanced to purchase mournings, and so she has said in her oath; but no final account having ever been settled, with regard to her necessary charges, she complains to this day, that what she thus received from the defender, is greatly too little for defraying the real expence and loss incurred by her on this journey.

This being the real state of the fact, it is impossible the defender can be blamed.—It was necessary to refute the assertion positively made by the pursuers, that Sir John Stewart had lived in the house mentioned in the condescendance, and it was impossible to ascertain the fact without bringing Mrs. Stewart to Paris.—She could not make this journey on her own expence, nor could the defender desire her; and Mr. Mackonochie, in this particular, followed the instructions of the defender's council, whose honour your Lordships will not make any doubt of.

The council for the pursuers, who mentioned this fact in the pleading, was so conscious, that nothing wrong was intended, that he fairly owned, he did not mean it as a charge against the defender, but only to use it by way of compensation, for the thirty livres given by Mr. d'Anjou to the son of Mignon.—And though, after the debate, the pursuers gave in a petition, craving Mr. Mackonochie's examination, with respect to reports from Lorette, and his employing Huber, they never once thought it worth while, to put a question with respect to money given to Mrs. Stewart.

The defender cannot here help complaining of the conduct of the pursuers in this matter. It appears from Mr. Stuart's letter to Mr. Davidson, lately printed, that even before Mrs. Stewart was brought from Bouloigne, he had reason to believe it was Ardschiell, and not Sir John Stewart, who had lodged in the above house. This he ought to have told, and, had he done so, the expence of the journey might probably have been saved; at least, when he saw her in Paris, and was certainly informed, that Ardschiell was the Scotch Colonel Stewart who had lived at Renaud's in November 1749; it was not extremely proper to persist in his former allegation, and to give in the condescendance to the House of Peers, affirming, that the person was Sir John Stewart.

The defender having, as he apprehends, fully justified the conduct of his own agents, must next take the liberty of making a few observations on the manner of conducting the cause against him; in doing which, he shall not resume what has already been stated in the memorial, concerning the irregularities of the Tournelle process, the publication of the Monitoire, and other unjustifiable operations in France.

France.—Neither shall he recapitulate those particular instances of impropriety, which have already been stated at sufficient length in the memorial.—It is with reluctance, that he enters at all into a matter of this kind, in a cause which does not require it; whatever indignation he may justly feel, on account of the attempt which has been made to do him the greatest of all injuries, and to load the memory of his parents with the greatest of all reproaches.

False reports
of Buhot,
supported by
Duruisseau,
the commiss-
ry.

In the memorial it has been observed, that the agent originally employed by the pursuers in France, and on whose reports they seem at that time to have entirely depended, was a person called Buhot, an inspector of police.—The errors which this gentleman led them into, and the false reports which he made, particularly with regard to the book of Michelle, contrary to the conviction of his own senses, have already been noticed in the memorial; and it has also been observed, that this book, which was at that time the sole basis of the plea, was deposited with great form, first, in the hands of Mr. Buhot, upon a proces verbal, before one Mr. Duruisseau, a commissary, or inferior magistrate, and afterwards lodged in the Tournelle, where it was for ever to remain.—In relating this fact in the memorial, the following pretty extraordinary anecdote has been omitted.—When it was found, that the Tournelle process would not be of avail, to set aside the defender's birth-right, and a new proof became necessary on the commission of your Lordships, it seems to have occurred to the pursuers, that a parole proof, with regard to the contents of Michelle's book, would be of more service to them, than production of the book itself, which, from the *ex facie* appearance of it, would have refuted their allegations. With this view, they examined, in April 1765, Mr. Duruisseau, the commissary, who was pleased to emit the following deposition. After mentioning the order of the lieutenant general of police, for the deposition of the book, he says, "That the
" said Michelle, having put in the hands of the deponent, his said
" register of furnished lodgings, which commenced in the month of
" October 1746; the deponent did prove the state thereof, and then
" put it in the hands of the said Monsieur Buhot, who took the charge
" of it, all agreeable to the minute of proceedings, which the depo-
" nent made out there, upon the 8th November 1762, which minute
" being now shown to him, he acknowledges, that the whole of it is
" wrote by his hand, and signed by him, and the same is now of-
" new signed by the deponent, as relative to his deposition, and also
" by the commissioner. Depones, that the article concerning *Monsieur*
" *Fluratt*, a Scotsman and his family, entered the 8th July 1748, (the
" said date of the day and year being in figures upon the said register)
" did

Purs. pr. 887,
B.

“ did not appear to the deponent any way suspicious, so much the ra-
 “ ther, that there were the *visa* of the said register before and after
 “ the article in question, by the *inspecteur* of the quarter, charged
 “ with that department, and that the leaf on which this article is
 “ wrote, as well as all the other leaves of said register, were signed at
 “ the top of the first page of each leaf, by *maitre Du Blon*, one of the
 “ deponent’s brethren, who signed the *ordonnance*, which is at the be-
 “ ginning of the said register. *Interrogated for the defender*, depones,
 “ that the deponent does not perfectly remember, if the *visa*, which
 “ are put before and after this article, are of the same month with
 “ the article ; but remembers, that there are upon the same leaf on
 “ which this article is wrote, and subsequent thereto, some other ar-
 “ ticles wrote, of which the deponent does not recollect the number,
 “ neither does the deponent recollect, if the *visa* of the *inspecteur* does
 “ immediately follow the article of Monsieur Fluratl, or is put after
 “ one or several other articles ; *but he is certain*, that there is a *visa*
 “ on the *same page* on which the article in question is wrote. De-
 “ pones, so far as he can remember, that the article which goes be-
 “ fore that of Monsieur Fluratl, *is of a date anterior to that of the 8th*
 “ *of July* ; that the deponent remembers to have asked at Michelle, of
 “ whose writing was the article of Monsieur Fluratl ? and that
 “ Michelle answered the deponent, that this article was neither of his
 “ writing, nor that of his wife ; and that he presumed, that it was
 “ *of the person who called himself Fluratl.*——That the book of fur- Purs. pr. 888,
 “ nished lodgings, which Michelle brings to the deponent every month, B.
 “ since the deponent had the department of that quarter, that the de-
 “ ponent may inspect the same, and make out from it, the list which he
 “ sends to the lieutenant general of police, *is posterior to the year 1750* ;
 “ that the deponent *never saw* the book, which the said Michelle had
 “ for the use of the commissaire *for the year 1748*. Depones, that ——— I.
 “ the article concerning Fluratl appeared to the deponent, to be of a
 “ hand-writing *distinct and different* from all the articles, both upon
 “ that and the next page ; that, so far as he can remember, that arti-
 “ cle appeared to him, to be of a writing, *very well formed*, and
 “ that it was the *best wrote of the articles on that page, or on the*
 “ next.”

From this deposition three things appear. 1mo, That the pursuers
 had not, even in April 1765, abandoned the evidence of Michelle’s
 book.—2do, That they did not then expect it would either be recover-
 ed from the Tournelle, or ever seen by those acting for the defender.—
 3tio, That this same Mr. Duruisseau has told down-right falsehoods,
 in order to give countenance to the erroneous reports of his friend Mr.
 Buhot.

That

That they meant to adhere to the evidence of this book is clear, from their adducing witnesses to prove that the article had no suspicious appearance, that the book was regularly marked by the inspecteur on the same page, and that the preceeding article was of a date anterior to that of Fluratl.—That they did not expect the book was ever to see the light, is also clear, from their adducing a witness whose testimony was in every article contradictory to the *ex facie* appearance of the book it self, if ever it should be looked at.—And, lastly, that this witness has been guilty of very glaring deviations from the truth, can admit of as little doubt.—From the book itself it appears, imo, That the article of Fluratl is not wrote in a *better hand*, than any of the other articles in the same or next page, on the contrary, there are fundry other articles in these pages of the very same hand-writing.—2do, It is not true that the preceeding article is of an *anterior date*, on the contrary, the date of Fleuratl, is the 8th July, and the date immediately preceeding, is the 12th of that month.—3tio, It is not true that the book is *regularly marked* by the inspecteur, for, in fact, there is no *visa* on that page, and but one on the preceeding page, as far back as May 1748.—4to, Though he has sworn, that *he never saw Michelle's livre du commissaire for the year 1748*, and that the book which he then marked as commissary, commenced in 1750; yet, upon the after production of this book, it appeared, that it commenced as early as the 1748, and was current at the same time with the livre de l'inspecteur.

The meaning of the first allegation was to prove, that the article concerning Fluratl had been wrote by the gentleman himself, and Michelle is made to say the same thing in the proces verbal, though he has since deponed that he never said so, and, though it is now confessed on all hands, that it was wrote by the servant-maid, whose hand-writing appears in other articles of the same page.—The meaning of the two next allegations was, to show the pretended regularity of the livre de l'inspecteur, contrary to what afterwards appeared in the book itself.—The meaning of the last was, to create a belief that the livre du commissaire, for the 1748, had been lost, contrary to the knowledge of the witness himself, who had an opportunity of seeing it once every month.—It was known to this gentleman, and to the agents for the pursuers, that this book, though it ought to have been in every respect the same with the livre de l'inspecteur, contained no article concerning Fleuratl; and, therefore, it was of the greatest importance to them, to suppress it altogether, and to have it supposed that the livre du commissaire was not existing for the year 1748.

The oath of this Mr. Duruisseau affords a remarkable instance of the danger of relying on parole testimony, in cases of this kind.—

He

He is a man of better rank than almost any other witness examined on the part of the pursuers in France, and he was examined upon facts which had happened recently, and which ought to have been perfectly consistent with his knowledge, yet his deposition is one continued falsehood from beginning to end.—Your Lordships will from thence judge what degree of credit is to be given to the low wretches, who, under the greatest apparent influence and bias, have deposed to facts, at the distance of sixteen years.

It is remarkable in this cause, that, in every instance where written evidence has been recovered, posterior to the examination of witnesses, on the part of the pursuers, the parole testimony has been contradicted by the written evidence relative to the same facts.—In the case indeed of Michelle's book, it can hardly be said, that written evidence has been recovered, as, in fact, the book is to this day, lodged in the Tournelle, but upon inspection of it, obtained contrary to what was supposed at the time of Duruisseau's examination, it was found to be, in every respect contrary to that witness's deposition.—The case of the Abbé Oneil, and the waggoners Pierre Voyet, &c. who were found out by him, is another instance somewhat similar upon this head. The abbé had been examined as a witness for the pursuers, at a time when it was thought of importance to fix Sir John Stewart and Lady Jane at Paris on the 21st of November, 1749, and subsequent days, down to the 28th or 29th. Accordingly the abbé gave a very pointed oath with regard to the times of their departure from Reims to Paris, their stay in that city, and their return to Reims, not seemingly taken from mere memory, but depending on particular marks of feast-days, and other probable causes of knowledge.—He also traced out Pierre Voyet, and some other country-men, relations or acquaintance of the chaise-driver, all of whom, after a conversation with him upon the head, concurred entirely with the abbé, and laid down a system in their oaths, by which they made Sir John, Lady Jane, and Mrs. Hewit, to have been in Paris about the 21st, and to have returned to Reims only about the 28th or 29th.—These concurring evidences would have been founded on by the pursuers, as affording compleat legal proof of the fact, but unluckily for them the whole system was overturned by written evidence afterwards recovered, that Sir John Stewart and his family set out from Reims for England on the 29th of that month.

But to return to Mr. Buhot, the next step taken by him, after discovery of the Michelle family, was, to converse with Madame Favre, ^{Mistaken} the nurse, from whom he was pleased to report, among other things, ^{report from} that Mrs. Hewit had told her, that Lady Jane had been delivered of twins, ^{Nurse Favre.}

Z

at Def. pr. 747.

at St. Germain, and that one of the children was dead.—Your Lordships will observe, that Mrs. Hewit never spoke a word of French in her life, and though she could have conversed with the nurse Favre, the report of Mr. Buhot is contradicted by her oath, as well as by the glaring improbability of the thing, that she should have told this woman Favre, that the youngest twin was dead, and that Lady Jane was delivered at St. Germain, when, at the very time, they were giving out, that the birth was at Paris, and the youngest child alive, and when they were pressing this very woman to go along with them to Reims, where (according to this report) she must have contradicted their story in every article.

Bringing
witnesses to-
gether.

Matters being so far prepared by these conversations, and erroneous reports of Mr. Buhot, and the Tournelle action having been advised, the great object of which was, to prove an *alibi* in the house of Michelle on the 10th of July, and the impossibility of Lady Jane's having been delivered at Paris in that month, the next step was, to bring the witnesses to a concurrence as far as possible, before their examination in the Tournelle; in order to which Mr. Buhot, who, at that time, appears to have had the sole direction of the affair (Mr. Stuart being a stranger, and not well acquainted either with the language or with the manners of the people among whom he was) in the first place, to save himself the trouble of going to the house where Madame Blainville lived, caused bring her to the hotel d'Anjou, in order that she might see her old friends Michelle and his wife, at the same time that Mr. Stuart and he examined her; and in the next place, as Madame Favre the nurse lived in the country, it was proper to give her a residence in Paris, that Mr. Buhot might have the easier access to her, and the house he was pleased to pitch on, was that of Michelle, where she was lodged for several weeks together, at bed and board, before her examination in the Tournelle, and where she had an opportunity of talking over the affair at full length, with the family of Michelle.

Purf. pr. 883,
F.

—She herself depones, “ That she has already made two journies from
“ Compiegne to Paris, on the subject of this process, both of them
“ two years ago, or thereabouts. That when she made the first jour-
“ ney, she staid at Paris fifteen days, at the hotel d'Anjou, rue Ser-
“ pente, in Michelle's house; and that when she made the second
“ journey, she staid at Paris ten days, and was lodged in the rue de
“ la Harpe, at the hotel d'Harcourt, opposite to the rue de Foin.
“ Depones, that she made these two journies, being sent for by Mr.
“ Buhot inspecteur de police at Paris. That in the first journey she came
“ alone, but that in the second, she came with the son of the said Mon-
“ sieur Michelle, who was sent to fetch her; and that this was in the
“ Month of December 1762. Depones, that for the expence of these

“ two

“ two journies, besides the tax, which the deponent received when she
 “ gave her deposition before the Tournelle, Madame Michelle lent her,
 “ by order of Mr. Buhot, four Louis-d’ors, at two different times, in all;
 “ for which she gave her notes to the said Madame Michelle. That
 “ the deponent expected that these notes for four Lewis-d’ors would
 “ have been repaid by Mr. Buhot, but that these four Lewis-d’ors are
 “ not yet paid. Depones, that during both the journies, the deponent
 “ eat at Madame Michelle’s house, by an arrangement between her
 “ and Madame Michelle, at the expence of the gentlemen who had
 “ sent for the deponent. Depones, that the four Lewis-d’ors, which
 “ the deponent received, as aforesaid, from Madame Michelle, were,
 “ for the expence of her two journies, without reckoning her enter-
 “ tainment. The deponent adds, in explaining herself, that in her
 “ second journey, she staid only three days at the hotel d’Harcourt,
 “ during which time she gave her deposition at the Tournelle, and
 “ that afterwards she went to lodge at the house of Madame Mi-
 “ chelle.”

Madame Michelle swears, “ That she saw Madame Favre soon after Purs. pr. 854,
B.
 “ her return from Dammartin, that is to say, three weeks or a month
 “ after her departure from Paris for Dammartin, and that she also saw
 “ her when she came to Paris, whither the said Madame Favre has
 “ made three journies on the subject of this affair. Depones, that at
 “ the first time the said Madame Favre came and lodged in the depo-
 “ nent’s house, she does not remember for how long time; that the
 “ second time, it was the deponent’s son, who was sent by Mr. Stuart
 “ to bring her from Compiègne, and that, this second time, she staid at
 “ the hotel d’Harcourt, rue de la Harpe; but that, after having given
 “ her deposition at the Tournelle, she lodged and eat at the deponent’s
 “ house; and that the third time, when she came to give her deposition
 “ before the present commissioners, she lodged in her brother’s house,
 “ at the Barriere de Chailiot.”

It will be observed, that though, upon Madame Favre’s second journey, she appears to have lodged at another hotel, yet the fact is, that she only slept in that other hotel, but passed the day in Michelle’s, and, as soon as her examination in the Tournelle was over, she returned to her old quarters, and slept as well as eat in the hotel d’Anjou. If fair things had been intended, there was no occasion to bring her to Paris till she was to be examined, and, even then, *one day* was sufficient, and great care ought to have been taken not to allow her and the family of Michelle to see each other before their examination.

The conduct of the pursuers agents, in taking no notice in their me- Suppressing
facts.
 morials of the circumstances told by Giles, Menager, Abbé Hibert,
 and others, nor examining Abbé Hibert as a witness in the Tournelle,
 after

after they had proposed so to do, and their insulting that gentleman, because he pretended to give evidence in behalf of the pregnancy, has already been noticed in the memorial.

Instilling
false preju-
dices into the
minds of wit-
nesses.
Def. pr. 604,
D.

Another circumstance, no less improper in their conduct at Reims, is deponed to by Madame Mailfer in these words: "That it was Mr. Stuart, here present, who she heard speak, for the first time, upon the present affair, and that he was accompanied by Mr. Recicourt, *conseiller echevin* of this town; that she heard it spoke of a second time by Mr. Stuart, accompanied by another stranger gentleman, who the parties know to be Chevalier Dalrymple. Depones, that some person who came with Mr. Stuart, though she cannot tell who, nor at what time, told to her, the deponent, that Madam Stewart's journey to Reims was not the first she had made to France. Knows that this was a stranger, but that it was not Mr. Stuart. And adds, that this stranger who spoke to her of this first journey to France, gave her to understand that Madam Stewart, in her youth, had not been a woman of the greatest prudence. Depones, that Mr. Stuart, here present, never spoke to her, the deponent, disadvantageously of Madam Stewart, and that the stranger above mentioned told her, that Madam Stewart, on death-bed, being solicited to say whether the children in question were hers, had at first answered, *Yes; and that, upon new solicitations being made her, she would not answer, and turned herself to the other side of the bed, without saying more.* Depones, that another stranger gentleman, whose name she does not know, to whom she said that she had seen the Dutchess of Douglas, wanted to make her believe that she was not of condition to espouse the deceased Duke of Douglas; that she, the deponent, having spoke of this to Mr. Abbé Colbert, he told her that the Dutchess of Douglas was of the family of Douglas, and a distant relation of the Duke's; that she, the deponent, saw the said stranger again, to whom she communicated what she learned from the said Abbé Colbert, and that then the stranger answered her, that the Dutchess of Douglas might be of a good family, but that she was not a match for the Duke."

Nothing could be more improper, than to endeavour, by such false insinuations, to create impressions and prejudices in the minds of those who were to be examined as witnesses.—The journal, indeed, which has been lately published, contains sundry professions of candour on the part of these gentlemen in their enquiries, "inasmuch that Michelle and Blainville could not discover, from their conversation, whether they were for or against the child of Lady Jane Douglas," a circumstance extremely entertaining, when your Lordships consider, that, not only had these witnesses been informed in the plaintes read to them,

them, that Mr. Stuart was the tutor of the Duke of Hamilton, insisting against the defender as a supposititious child, but he himself expressly informed them, as appears from the very same passages of the journal, that he had discovered French parents for one of the children.—From Abbé Hibert's oath, it appears to have been well known at Reims, that Mr. Stuart was against the child, and it does not appear, that the character under which he acted was less known at Paris.

The many requetes, and other papers dispersed by the pursuers in France, besides the Monitoire publicly affixed, and the plaintes read to the witnesses, and the private memorials which were put into the hands of some of them, must likewise have been attended with a very unfair influence.—Madame Audry, a witness, once much depended on, says, that she received two printed papers, one of them intitled, *A collection of pieces* presented to his most Christian Majesty, and to the Tournelle of the parliament of Paris; the other, observations, serving for answer to an anonymous writing, bearing the title of an abridged memorial for Mr. Douglas.—The condescendance offered to this court had been translated into French, and subjoined to these observations, from which Madame Audry not only saw a connected history given of every circumstance relative to the pretended imposture, but she saw a positive averment put into her own mouth, that she had sat next Lady Jane in the stage-coach from Reims to Paris, without observing any appearance of her being with child.

Unfair publications.

Purf. pr. 920, A.

But it would be endless to point out every instance of refreshment of memory, and instruction given to witnesses.—It will perhaps be said, that even on the part of the defender, a memorial of facts was published in France, and that this must have had a similar tendency with those published by the pursuers.—It is true, that a short state of facts was thought necessary to be published in self-defence; but this paper contained only such facts as were already established, not facts that were to be the subject of proof, and therefore was very different in its nature from any of the publications on the part of the pursuers, nor could it have the least tendency to guide or instruct any one witness who was to be examined.

The pursuers did not even confine themselves to the publication of memorials.—The depositions of Sanry and his wife, and of the curé de St. Laurent and Legris were printed in February 1764, and dispersed thro' Great Britain and France.—Other parts of the proof were published by them from time to time, without authority of the court, with a view of creating influence and prepossession, and sometimes with false titles prefixed, such as the late letter found in the repositories of Mrs.

Hewit.—With the same view, probably, it was, that unfair and partial narrations of the proceedings in the cause were published by their direction in magazines, and that the judgment of the House of Peers, on the appeal in 1764, was misrepresented by them in news-papers.

The above are some of the instances of misconduct and of inclination to take advantage, which occur on the part of the pursuers.—Others are taken notice of in the memorial.—Every endeavour, however, has proved fruitless ; and as the defender is advised, that his success on the merits of the cause is infallible, so it is the less material for him to consume further time in details which are in themselves disagreeable, and which it was his inclination and wish entirely to have avoided.

I N D E X

T O T H E

APPENDIX to the MEMORIAL for the DEFENDER.

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C O P Y

O F

GODFROY'S POLICE-BOOK, from the 21st February 1747, when it commences, to the 1st January 1750; and abstract from his Household-books for the same period.

THE left-hand column contains the whole persons entered in the livre de l'inspecteur or Police-book, during the period above mentioned, with the dates of their entries, as marked in that book. —The middle and right-hand columns contain all the persons who, from either of the Household-books, appear to have entered to Godfroy's during that period. The middle column relates to those who are entered by name, and at the same time have corresponding entries in the Police-book. All the others are in the right-hand column. This right-hand column, therefore, contains all the entries by name in the Household-books, which have not corresponding entries in the Police-book, and likewise all the blank entries. Of those last, viz. the blank entries, it will be admitted, that above three fourths have no corresponding articles in the Police-book; and the defender maintains, that the whole of them are in that situation, though the pursuers, by *conjecture*, taken from dates or other circumstances, endeavour to fill up some of the blanks from entries in the Police-book.

The departures of such of the companies, whose leaving the hôtel is mentioned in the Household-book are marked; others are uncertain from the book, as their accounts do not mention when they left the inn.

In general, it will be observed, that these three columns contain entries, relative to the whole persons or companies who, from any of Godfroy's books, so far as they have been seen, appear to have entered to his house, from 21st February 1747 to January 1750.

By inspection of the first and second columns, it will appear what persons, marked in the Police-book as in the hôtel de Châlons, during the above period, had accounts or entries corresponding to them, by name, in the Household-books of Godfroy, and what persons had no such accounts or entries.—From a comparison of the first and last columns, it will appear, that a great many persons were marked, partly by name, and partly anonymous in the Household-books during that period, who certainly were omitted in the Police-book. And the whole columns, taken together, show, that the Household-book, as well as the Police-books, are extremely defective, the one containing names and companies, which are not to be found in the others, *et vice versa*; and all of them together containing very few guests, in proportion to the number of rooms, and in proportion to the numbers of people who frequented the inn, as will be more particularly explained in the observations subjoined to the abstract.

*Persons in the liore de l'ins-
pecteur.*

*Persons in the liore du depense, and
also in the liore de l'inspecteur.*

*Persons in the liore du depense, but
not in the liore de l'inspecteur.*

F E V R I E R 1747.

21 Fevrier.
MONS. Gault, marchand à Troyes.
Vu le 22.

22 Fevrier. (I.)
M. l'Abastide, capitaine du milice, au
premier bataillon. Vu le 28.

28 Fevrier.
M. de Matigny, lieutenant-general de
cavalerie.

M. de la Panetrier, marchand de Chauny.

27 Fevrier (I.)
Jean Pierre Borckens marchand d'Anvers,
M. Paul Vandermier, Abbe d'Anvers.

21 Fevrier. (III.)
M. Gauault est entré à soupée.
A resté jusqu'au 15 May.

27 Fevrier. (III) (V)
M. de Matigny est entré à soupée.
Onze jours et demi.

27 Fevrier. (III)
M. de la Panetrier est entrée à soupée.

22 Fevrier. (III.)
M. — est entré à diné.
Cinq jours et demi.

27 Fevrier, (III)
M. — sont entrés à diné.
Onze jours pour ces messieurs.

M A R S 1747,

1 Mars.
M. Bertheline, marchand à Troyes.
Vu le 3.

7 Mars.
M. Brodard, ancien capitaine au regiment
d'Orleans. Vu le 9.

17 Mars.
M. Hiesmance, marchand d'Anvers.

M. Sanen, marchand d'Anvers.

M. Parmentier, attaché à M. le Comte
de Lovendal, venant de Namur.

(I.)
M. Pomery, au préfidial de St. Quin-
tin.

1 Mars. (III.)
M. Bertheline est entré à diné, et M. son
neveu
M. Fromagot est parti le 6 Mars.
Cinq jours.
Quinze jours et demi pour Monsieur.

7 Mars.
M. Brodard est entré à soupée, et un
garçon.
Six jours pour M. et le garçon.

17 Mars. ** (III)
M. Hiesmance est entré à soupée.
A resté jusqu'au 10 Avril.

17 Mars. (III.)
M. Sanen est entré à diné.
Quinze jours de Mars.
Onze jours d'Avril.

17 Mars (III.)
M. Parmentier, attaché à M. le Comte de
Lovendal A resté jusqu'au 5 Avril.

7 Mars.
M. — est entré à soupée, et une de-
moiselle.

7 Mars.
M. — est entré à soupée, Mad son
épouse, et M son fils.
Deux jours pour M. Mad et leur fils.
Deux jours pour le garçon.

16 Mars.
M. de Choissin est entré à soupée, Mad. et
Mademoiselle sa fille, et 3 domestiques.
N'ont resté qu'un jour.

17 Mars

* * The Accounts marked thus * * are taken from Godfroy's Book, produced by him on his second examination, 30th July, 1765.—Purs. pr. p. 104, C.—which Book, he says, he kept for those who did not lodge, but only eat in his house; and for some persons, who may have lodged there, but at a cheaper rate than the ordinary; — so that it is uncertain, if all these Accounts belong to persons who lodged in the house or not. — Some other Accounts from this Book, which belong to persons who do not seem to have lodged in the house are subjoined to these Excerpts.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

17 Mars 1747.
M. Polonceau, marchand à Reims.
Vu le 20.

11 Mars. (III.)
M. de Polonceau est entré à soupée.
Treize jours.

20 Mars
M. — est entré à diné, et un garçon.

21 Mars.
M. de Charanfay, capitaine de carabiniers.

21 Mars.
M. de Charanfay est entré à diné, et un garçon. Trois jours pour Monsieur.

22 Mars.
M. Croifon, marchand à Troyes.
Vu le 24.

22 Mars.
M. Croifon est entré à soupée.
A resté jusqu'au 9 May.

8 Avril.
M. Badouin d'Orleans.

20 Mars.
M. Badouin est entré à diné, et un garçon.
Trois jours.
Neuf jours et demi.
Treize jours et demi.

26 Mars.
M. de Jonquer est entré à diné.
Cinq jours.

27 Mars. **
M. de la Buhoteri est entré à soupée.
Quatre jours.

28 Mars.
M. — est entré à diné, et M. son fils, et un garçon.
Deux jours et demi.
M. de Loras.

29 Mars.
M. Boiteft est entré à diné, et deux domestiques.
Trois jours pour M. et les garçons.

A V R I L 1747.

8 Avril.
Mons. Pictory, lieutenant-criminel de Troyes.

1 Avril.
M. Pictory est entré à diné, et un garçon.
Trente jours pour le garçon.
Dix-neuf jours et demi pour le garçon.

1 Avril.
Mademoiselle de Vauprade est entrée à soupée.
Dix jours et demi.

M. Vallion, mousquetaire noir.

30 Mars (V.)
M. Vallion est entré à soupée, et un garçon.
Trente-un jours et demi.

(I.)
M. et Mad. Vaupral d'Anvers.

10 Avril. (I.)
M. Loras, ancien capitaine de dragons,
Mad. son épouse, M. son fils, officier
au regiment Royal Vaisseau de Lyon.

14 Avril.
M. le Comte de Fruges de St. Omer.

14 Avril.
M. le Comte de Fruges est entré à diné, et un garçon.
Seize jours d'Avril.
Trente un jours de May.
Trente jours de Juin.
Trente-un jours de Juillet.
Seize jours d'Aouft.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

14 Avril.
M. Taffin et M. son fils, marchand d'Orleans.

26 Mars. **
M. Taffin, et M. son fils et le garçon
Seem to have staid four day, and to
have returned the 14th April, and
remained two days.

14 Avril.
M. de Melun, officier d'invalides à Bouloign.

9 Avril. (III) (V.)
M. de Melun est entré à soupée.
Onze jours et demi pour Monsieur.

14 Avril.
M. de Vauvray de Rhetel.

9 Avril. (III.)
M. de Vauvray de Rhetel.

14 Avril (I.)
M Boufflers, marchand d'Aumal.
Vu le 14 Avril.

17 Avril. (III.)
M. Veaucourt est entré à soupée.
Cinq jours pour Monsieur.

21 Avril.
M. Bidet, et M. son fils, de Reims.

19 Avril.
M. Bidet est entré à soupée, M. son fils,
et un garçon.
Onze jours d'Avril.
Onze jours et demi pour M. son fils.
Neuf jours pour Monsieur.

M. Comparot, president à Troyes.

15 Avril. (III.)
M. Comparot est entré à soupée.
Quinze jours et demi d'Avril.
Un jour de May.

23 Avril.
M. Quenil de Leche en Poitou.

23 Avril. ** (III.)
M. Quenest est entré à soupée.
Seems to have staid till 8th May.

27 Avril.
M. Boisgelet de Reims.
Vu le 28 Avril.

27 Avril.
M. Boisgelet est entré à soupée, et un
garçon.
Trois jours et demi d'Avril.
Dix-neuf jours de May.

M A Y 1747.

1 May.
M. Smelier, secretaire du roi de Rofay.
Vu le 5.

1 May.
M. Smelier est entré, et un garçon.
Dix jours et demi

(I.)
M de Riegenbery de Mayence.
Vu le 12 May.

5 May.
M. Perier, Mad. son épouse, une femme
de chambre, et un garçon.
Onze jours pour Monf. Mad. et la fille.

5 May. (III.)
M. — est entré à soupée.
Deux jours pour Monsieur.

6 May

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

14 May. (II.)
M. Dubois, lieutenant des gardes Valoon en Espagne, prisonnier de guerre.
Vû le 18 May.
Vû le 25.
M. Copens de la Chapelle, gentilhomme de Gand, avec son domestique.
Vû le 2 Juin.

15 May. (V.)
M. Dubois est entré à diné, et un domestique.
A resté jusqu'au 4 Juin.
19 May.
M. Coples, Gentilhomme de Gand, et un garçon.
A resté jusqu'au 29.

6 May. (III.)
M. de Valcour est entré à diné.
Six jours.
8 May. (III.)
M. — est entré à soupée.
10 May. (III.)
M. — est entré à soupée et un garçon.
Neuf jours pour Monsieur.
11 May.
Mad. — font entrées à soupée, et une femme de chambre.
19 May.
Mademoiselle de Lomel est entrée à soupée, et une fille.
Dix jours et demi pour Mademoiselle.

J U I N 1747.

13 Juin.
M. de Fresne d'Amiens.
13 Juin.
M. de Cambray de Reims.
13 Juin.
M. Blondel de Reims.
Vû le 15 Juin.
18 Juin.
M. Duvaudier, conseiller au parlement de Metz.
20 Juin.
M. Tassin, et M. son fils, marchand d'Orleans.
20 Juin.
M. Desjardin, marchand à Reims.
Vû le 22.

13 Juin. (III.)
M. de Fresne d'Amiens est entré à soupée.
13 Juin.
M. de Cambray est entrée à soupée, et un garçon.
Cinq jours pour Monsieur et le garçon.
13 Juin.
M. Blondel est entré à soupée et un garçon.
Cinq jours et demi.
16 Juin. (III.)
M. Duvaudier est entré à diné.
Quinze jours et demi pour Monsieur.
9 Juin. **
M. Tassin, et M. son fils ont soupée.
Seem to have eat only, and that seldom till 23d June.
20 Juin. (III.)
M. Desjardin est entré à soupée.
Sept jours et demi.

27 Juin.
M. — font entrées à soupée, et une femme de chambre.

Persons in the livre de l'inspecteur.

1 Juillet.
M. Roger, negociant à Lyon.

1 Juillet.
M. Sarazin, gentilhomme près Nancy.

Persons in the livre du depense, and also in the livre de l'inspecteur.

29 Juin. (III.)
M. Roger negociant de Lyon.
Neuf jours pour Monsieur.

30 Juin. (II.)
M. Sarazin est entré à diné, et deux domestiques.
Dix jours pour Monsieur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

J U I L L E T 1747.

3 Juillet
M. Fremin de Reims.

M. le Baron de Dorste, chanoine de la cathedral de Munster en Vestphalie, et M. Copenhagen, son gouverneur, chanoine de Salm.

(II.)
Le fleur Sarrazin, seigneur de Germain-villiers, en Lorraine.
Vû le 7 Juillet.

28 Juillet.
Mad. de Valcourt de St. Germain en Laye.

3 Juillet. (III.)
M. Fremin est entré à soupée.

6 Juillet. (III.)
M. le Baron de Dorste, et M. son gouverneur, sont entrés à soupée.
Ont resté jusqu'au 16 Aoust.

25 Juillet. (III.)
M. de Germain-villiers est entré à diné.
Sept jours de Juillet.
Deux jours et demi d'Aoust.

27 Juillet.
Mad. de Valcourt est entrée.
A resté jusqu'au fin de l'année.

3 Juillet. (III.)
M. — est entré à diné.

16 Juillet.
M. Gault, et M. de Corbon sont entrés à diné.
Quatre jours et demi.

24 Juillet. (III.)
M. Cliquet est entré à soupée.
26 M. est parti.

29 Juillet. (III.)
M. Jaron est entré à diné.
Deux jours pour Monsieur.

A O U S T 1747.

28 Juillet. (II.)
M. Minchat de Guise.
Vû le 1 Aoust,

3 Aoust. (III.)
M. Menezet de Guise.
Vingt-quatre jours et demi.

3 Aoust. ** (III.)
M. Bethu à couchée.
Quatorze jours pour la couchée.

8 Aoust. (III.)
M. — est entré à soupée.

11 Aoust. (III.)
M. Gauault est entré à diné.

11 Aoust. **
M. Buhoteri à soupée.

14 Aoust

Persons in the livre de l'inspecteur.

14 Aoust.
M. Riquet, receveur de tailles de Nemours.

14 Aoust.
M. Croyson, marchand à Troyes.

(I.)
M. le Chevalier de Beaupuis de l'Amerique.

15 Aoust.
M. Bidet, officier de chez le roi, de Reims.

M. Doueil, officier de chez le roi, de Reims.

16 Aoust.
M. Piotte, gentilhomme près Troyes.

18 Aoust.
M. Charanfay, capitaine de carabiniers.

19 Aoust. (II)
M. de Vavray de Retel. Vû le 19.

Vû le 23.
M. Caron, lieutenant de la marechaussée de Senlis.

M. le Vasseur, prieur de l'Abbay de Bonneveaux. Vû le 25 Aoust.

28 Aoust.
M. le Smelier, secretaire du roi, de Rosay en Brie

M. Mailfer, et Mad. de Forzy. Vû le 31.

Persons in the livre du depense, and also in the livre de l'inspecteur.

11 Aoust. (III.)
M. Riquet est entré à diné. Douze jours pour Monsieur.

10 Aoust. (III.)
M. Croyson est entré à soupée.

14 Aoust. (III.) (V.)
M. Bidet est entré à soupée. Dix-sept jours d'Aoust. Onze jours de Sept.

14 Aoust. (III.) (V.)
M. Doeuil est entré à soupée. Dix-sept jours d'Aoust. Dix-sept jours de Sept.

6 Aoust.
M. Piotte de Courcelles et un domestique. Quinze jours et demi d'Aoust. Quatre jours de Sept.

18 Aoust.
M. de Charanfay est entré à soupée, et un domestique. Dix jours pour Monsieur.

21 Aoust. (III.)
M. de Vauvray est entré à soupée. Dix jours et demi d'Aoust. Cinq jours de Sept.

21 Aoust. ** (V.)
M. Caron à soupée. Quatre jours.

21 Aoust. (III.)
M. le Vasseur, prieur de l'Abbay de Bonneveaux. Huit jours et demi.

28 Aoust. (III.)
M. Smelier est entré à soupée. Trois jours et demi.

31 Aoust.
M. Mailfer, et Mad. de Forzy, et une femme de chambre. Quinze jours pour M. Mad. et la femme de chambre.

Persons in the livre du depense, but not in the livre de l'inspecteur.

24 Aoust. **
M. Pierre de Gargane est entré à soupée. Quatre jours et demi.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

S E P T E M B R E 1747.

Vu le 15 Sept.
M. Bouffier, marchand à Aumale près
Normandie. Vu le 18.

Vu le 20.
M. Therion, marchand de Reims.

M. l'Abbé Caré, prieur curé de Mes-
robert. Vu le 23.

28 Sept. (I.)
M. Sprecher, major du regiment du Plan-
tin, prisonnier de guerre de Bruxelles.
Vu le 30 Oct.

15 Sept. ** (III.)
M. Bouffiers est entré à soupée.
Neuf jours.

21 Sept. (III.)
Mess. Terion sont entrés.
Trois jours pour ces messieurs.

17 Sept. ** (III.)
M. Caré à soupée.

20 Sept.
M. du Neufchatel est entré à soupée, et
un garçon
Deux jours et demi pour Monsieur.

22 Sept. **
M. Tassin à diné et soupée.

17 Sept. **
M. Caron à soupée.

27 Sept.
M. — est entré à soupée, et un gar-
çon.

30 Sept. **
M. — à soupée, et les deux domes-
tiques.

O C T O B R E 1747.

5 Oct.
M. Langlois, marchand de Guise.

Vu le 6 Oct.
M. Camusat.

(I.)
M. Gault, marchand de Troyes.

M. Coufin.

M. de Beaupuis, Americant.

(I.)
M. Pomery, marchand de Nemours,

M. Boilet, maréchal des logis de la mai-
son de roi.
Vu le 10 Oct.

4 Oct. (III.)
M. Langlois à soupée.

10 Sept. (III.)
M. Camusa est entré à soupée.

6 Oct. (III.)
M. Coufin est entré à soupée.
Six jours et demi.

10 Oct. (III.)
M. de Beaupuis est entré à soupée
Vingt-un jours et demi.

8 Oct.
M. Boilet est entré à soupée, et trois
garçons.
Quatre jours pour Monsieur.

10 Oct.
M. Augé à couchée.

14 Oct.
M. Polonceau est entré à soupée:

Persons in the livre de l'inspecteur.

Vû le 08 18.
M. Colombe de Carabiniers, &c.

M. Tassin et Messieurs ses fils, marchand d'Orleans.

M. Desjardins, marchand de Reims.
Vû le 20 08.

(I.) Vû le 22.
M. Crimot, lieutenant au regiment du Prince Camille.

(I.)
M de Sanguac, lieutenant au dit regiment.
Vû le 25.

Persons in the livre du depense, and also in the livre de l'inspecteur.

18 08.
M. Montesquiou, M. Lautrer, et M. le chirurgien major, sont entrés à diné.
Deux jours pour ces Messrs.

22 Sept.
M. Tassin à diné.

17 08 (III.)
M. Desjardins est entré à diné.

Persons in the livre du depense, but not in the livre de l'inspecteur.

8 08
M. de Melun est entré à diné.
Deux jours.

25 08. (VI.)
M. — sont entrés à soupée, et deux domestiques.
Un jour et demi pour ces Messrs.

N O V E M B R E 1747.

6 Novembre.
M. Janfin, capitaine baillie de Viviers en Loraine.
Vû le 7 Nov.

20 Novembre.
M. Jaron Marchand d'Orleans.

30 Decembre.
M. Lagnot, député des états docteur d'Arras.
Vû le 2 Dec.

6 Novembre. (III.)
M. Janfin est entré à soupée
Quatorze jours de Nov.
Huit Jours de Dec.

19 Novembre. (III.)
M. Jaron est entré à soupée.
Deux jours.

30 Novembre.
M. Lagnot est entré à soupée, et un garçon.
Dix jours et demi pour Monsieur.

D E C E M B R E 1747.

5 Decembre.
M. Savin, capitaine au regiment de Raugrave en garnison à Givet.

6 Decembre.
M. de Villers, lieutenant-colonel du regiment de Rochfoucault.

7 Decembre.
M. Charpentier, commissaire du guerre de Douay.

5 Decembre.
M. Savin est entré à diné et deux garçons.
Vingt-six jours de Decembre.
Vingt-six jours et demi de Janvier.

6 Decembre.
M. de Villers est entré à soupée, et quatre domestiques.
Quatre jours et demi.

7 Decembre. (III.)
M. Charpentier est entré à diné.
Dix-neuf jours et demi.

Persons in the livre de l'inspecteur.

8 Decembre,
M. de Provify, capitaine au regiment de
Fleury de Reims. Vu le 9.

26 Decembre. (I.)
M. de Manines, Bourgeois de Paris.
Vu le 27.

*Persons in the livre du depense, and
also in the livre de l'inspecteur.*

8 Decembre. (III.)
M. de Provify est entré à diné.
Vingt-trois jours.

*Persons in the livre du depense, but
not in the livre de l'inspecteur.*

26 Decembre. (III.)
M. — est entré à soupée.

28 Decembre. **
M. Launois à soupée et un domestique.

J A N V I E R 1748.

2 Janvier.
Monf. Boufflers marchand à Aumal
Vu le 2.

M. Caignard Bourgeois de Troyes en
Champagne. Vu le 11.

15 Janvier.
M. Jacquin, Procureur de Troyes en
Champagne. Vu le 18.

23 Janvier.
M. Caron, Prevost de la Marechaussée de
Senlis. Vu le 25.

2 Janvier. ** (III.)
M. Boufflers est entré.
9 jours.

8 Janvier. (III.)
M. Guignard est de Troyes entré à diné.

13 Janvier. (III.)
M. Jacquin est entré à diné.
10 jours.

22 Janvier. ** (III.) (V.)
M. Caron est entré à diné.
9 jours.

14 Janvier. (III.)
M. Guignard est entré à soupée.
Huit jours et demi.

18 Janvier,
M. Hausel, Receveur de Tabac est entré
à soupée, et un garçon.
Trois jours et demi pour Monf.

29 Janvier. (III.)
M. — est entré à soupée.

F E V R I E R 1748.

1 Fevrier.
Monf. Tassin, et ses fils marchand de
Orleans.

2 Fevrier.
Monf. Desjardins marchand à Reims.

3 Fevrier.
Monf. Pommier marchand à Nemour

3 Fevrier.
M. Fouilliet marchand de Fountain-
bleau.

8 Fevrier.
M. Ballatier gentilhomme de Dijon.
Vu le 6 Fevrier.

1 Fevrier. **
M. Tassin et ses fils.
Quinze jours.

2 Fevrier (III.)
M. Desjardins est entré à diné.
Dix-neuf jours.

2 Fevrier. ** (III.)
M. Pommier est entré à soupée.
Neuf jours.

2 Fevrier. ** (III.)
M. Fouilliet est entré à soupée.
Neuf jours.

Fevrier.
M. le Comte de Balletier est entré à
soupée, et un garçon.
Dix-huit jours

6 Fevrier. (III.)
M. du Coudray est entré à diné.
Seize jours.

8 Fevrier.

Persons in the livre de l'inspecteur.

9 Fevrier.
M. Langlois, marchand à Gazor.

7 Fevrier. (I.)
M. de Lantage, capitaine au regiment de Rouvergne en garnison à Calais.
Vu le 13.

15 Fevrier.
M. Dagnau demeurant à Laon.

18 Fevrier.
M. Gaurin, marchand d'Amiens.
Vu le 21.

Persons in the livre du depense, and also in the livre de l'inspecteur.

9 Fevrier. (III.)
M. Langlois est entré à diné.
Deux jours

10 Fevrier. (III.)
M. Dagnau est entré à soupée.
Dix-neuf jours et demi de Fevrier.
Trente-un jours de Mars.
Dix jours d'Avril.

16 Fevrier.
M. Gaurin, marchand d'Amiens est entré à soupée, et un garçon.
Quatorze jours et demi.

Persons in the livre du depense, but not in the livre de l'inspecteur.

14 Fevrier.
M. de la Porte, marchand à Troyes et un garçon.
Seize jours de Fevrier.
Onze jours de Mars.

24 Fevrier. (III.)
M. — est entré à soupée.

27 Fevrier. (III.)
M. de Valcourt est entré à soupée.
Deux jours et demi.

M A R S 1748.

Vu le 11 Mars.
M. de Troly, ancien capitaine au regiment de Berie cavalerie.

Messrs. Cocqueber, tresorier de France, au bureau des finances de Champagne.

M. de Perth, avocat à Reims.
Vu le 16 Mars.

Vu le 20 Mars
M. Piot des Courcelles gentilhomme de Troyes.

Vu le 2 Avril.

Vu le 2 Avril
M. Polonceau, directeur du Tabac à Reims.

(I.)
M. de Monfroy, avocat d'Avalon en Bourgoigne.

3 Mars. (V.)
M. de Troly, capitaine au regiment de Berry, et un garçons.
Dix-sept jours pour Monsieur.

2 Mars.
Messrs. Cocqueber et du Perth, sont entrés à diné et un domestique
Trente jours de Mars pour ces Messrs.
Neuf jours d'Avril pour ces Messrs.

26 Fevrier:
M. Piot de Courcelle est entré à soupée, et deux garçons.
Trois jours de Fevrier.
Trente-un jours de Mars.
Quinze jours d'Avril

27 Mars. (III.)
M. Polonceau est entré à diné.
Onze jours et demi.

Persons in the livre de l'inspecteur.

(I.)
M. Hugnet, Seigneur d'Estaulle près
d'Avalon. Vû le 5.

*Persons in the livre du depense, and
also in the livre de l'inspecteur.*

*Persons in the livre du depense, but
not in the livre de l'inspecteur.*

20 Mars.
Messrs. — font entrés à diné, trois domestiques.
Trois jours pour ces Messieurs.

26 Mars. **
M. de Launoy est entré à soupée.

28 Mars.
M. Smelier est entré à soupée, Madame, et un ami, et un garçon.
Un jour et demi pour Monf. et Mad.

28 Mars. (III.)
Messrs. Monf. et — font entrés à soupée.
Quatre jours de Mars.
Vingt-trois jours d'Avril.

29 Mars. **
Le Cousin Boitel et un amis ont soupé.
Cinq jours.

30 Mars,
M. Boitel est entré à diné et deux garçons.
Deux jours pour Monf. et les garçons.

A V R I L 1748.

7 Avril. **
M. Tassin est entré à diné et son fils.

8 Avril. (III.)
M. — est entré à soupée.

10 Avril.
Messieurs — font entrés à diné, et deux domestiques.
Un jour et demi pour Messieurs.

11 Avril.
M. Boitel est entré à soupée et un garçon.
Deux jours pour Monf. et le garçon.

18 Avril. ** (III.)
M. Boufflers et M. de Clerc font entrés à soupée.
Huit jours.

19 Avril. (III.)
M. de Rouvrois est entré à soupée.
Huit jours.

22 Avril. (III.)
M. et Mad. Terion font entrés à soupée.

22 Avril. **
M. Piote de Courcelle est entré à dîne, et un garçon.
Huit jours de Avril.
Neuf jours de May.

30 Avril.

Persons in the livre de l'inspecteur.

24 Avril. (II)
M. Marlot de Reims.

29 Avril.
M. le Smelier, secretaire du Roy de Ro-
fay en B.

29 Avril.
M. le Baron d'Horst, grand chanoine de
l'Eglise de Munster.

*Persons in the livre du depense, and
also in the livre de l'inspecteur.*

25 Avril. (III.)
M. Marlot de Reims est entré à soupée.
Cinq jours et demi de Mars.
Dix jours de May.

29 Avril.
M. Smelier est entré à soupée et un gar-
çon.
Un jour et demi d'Avril.
Neuf jours de May.

29 Avril.
M. le Baron d'Horst, grand chanoine de
la cathedral de Munster, et un gar-
çon.
Un jour et demi d'Avril.
Neuf jours de May.

*Persons in the livre du depense, but
not in the livre de l'inspecteur.*

30 Avril.
M. Charanfay est entré à soupée et un
garçon
Deux jours et demi.

M A Y 1748.

2 May.
M. de Bezane, capitaine au regiment de
Montboffier.

4 May.
M. de Charanfay, capitaine de Carabi-
niers.

6 May. (I.)
M. de Senne, avocat d'Arras.

7 May.
M. de Launois, brigadier du garde de
corps du Roi.

Vu le 9.

12 May. (I.)
M. Wright, marchand de Londre.

2 May. (III.)
M. de Bezane, capitaine au regiment de
Montboffier.
Cinq jours.
Dix-neuf jours de May.
Dix jours et demi de Juin.

4 May. (III.)
M. Charanfay est entré à soupée.
Quatre jours et demi.

7 May: **
M. de Launois à soupée.

6 May. (III.)
M. est entré à soupée.

6 May. ** (III.)
M. le prieur de Nemours, et Mesdemoi-
selles, ses nièces sont entrés.
Huit jours.

9 May.
M. Dorigny, est entré à soupée, Mad-
son épouse, et une femme de chambre.
Quatre jours et demi pour M. et Mad.
Trois jours et demi pour la femme de
chambre.

Persons in the livre de l'inspecteur. * *Persons in the livre du depense, and also in the livre de l'inspecteur.* * *Persons in the livre du depense, but not in the livre de l'inspecteur*

12 May. M. Hiefmance, marchand d'Anvers.	* 12 May. ** (III.) * M. Hiefmance et son fils, ont soupée. * Au 3 de Juin.	
M. Sanen, et Mad. son épouse, Mad. d'Anvers.	* 12 May. (III.) * M. Sanen, negociant d'Anvers, et Mad. son épouse. * Dix-neuf jours et demi de May pour M. et Mad. * Quatre jours de Juin.	
13 May. M. Paulmier, marchand à Nemour.	* 13 May. (III.) * M. Paulmier de Nemour, est entré à diné. * Quatre jours.	
		20 May. (III.) M. — est entré à diné. Deux jours et demi.
		23 May. ** M. de la Buhoteri, à soupée. Six jours.
24 May. M. Caron subdelegé de Sanlis, et Mad. son épouse. Vû le 27.	* 24 May. ** (III.) * M. Caron et Mad. ont soupée. * Quatre jours.	
30 May. M. le Feburé, marchand à Rouen	* 30 May. (III.) * M. Elie le Febure, marchand à Rouen. * Un jour et demi. * Six jours de Juin.	
M. le Comte de Reine Desmondidier.	* 27 May. * M. le Comte de Reine, est entré au foir et un domestique. * Dix jours pour la chambre.	
M. de Refette, officier au regiment de Bassigny de Lille. Vû le 5 Juin.	* 30 May. (III.) (VI) * M. Refette, officier dans Bassigny, sont entrés à soupée. * Un jours et demi de May. * Trente jours de Juin. * Quinze jours de Juillet.	

J U I N 1748.

(I.) M. Mahon, procureur du Roy de Troyes. Vû le 19 Juin. Vû le 26.		
		3 Juin. (III.) M. Dufresne archidiacre de Senlis, est entre à soupée, et son neveu. Sept jours.
		6 Juin. ** (III.) M. de Pomereaux, est entré à d'n.
		6 Juin. (III.) M. de Nogon, est entré à soupée. Deux jours et d i.

7 Juin-

Persons in the livre de l'inspecteur. * *Persons in the livre du depense, and also in the livre de l'inspecteur.* * *Persons in the livre du depense, but not in the livre de l'inspecteur.*

		* 7 Juin. (III.)
		* M. — est entré à soupée.
		* 8 Juin. **
		* Mess. Tassin, pere et fils.
		* 9 Juin. **
		* M. Du Bois à soupée.
		* Quatre jours.
		* 19 Juin. (III.)
		* M. Desjardin, est entré à soupée.
		* Neuf jours et demi.
		* 21 Juin. (III.)
		* M. Descourbons, est entré à soupée.
		* Neuf jours et demi.
		* Six jours.
		* Vingt-un jours.
		* 29 Juin. **
		* M. Jaron, est entré à soupée.
		* Deux jours.
		* 30 Juin. **
		* M. Boitel, est entré à soupée, et deux garçons.
		* Un jour et demi.

J U I L L E T 1748.

* 4 Juillet.	* 2 Juillet. (V.)	* 4 Juillet. (III.) (VI.)
* M. de Bezemont, colonel d'infanterie de Corbeille.	* M. de Bizemont, colonel d'infanterie de Corbeille, est entré à diné et un garçon.	* M. — sont entrés à soupée.
* Vû le 8.		
* 7 Juillet. (I.)		
* M. Stuart, gentilhomme Ecois, et Mad. son épouse.		
* Vû le 11.		
* 18 Juillet.	* 17 Juillet. (III.)	
* M. de la Motte marchand de Reims.	* M. de la Motte, negociant de Reims.	
	* Cinq jours.	
* 19 Juillet.	* 19 Juillet. (III.)	
* M. Vildot, de la ville d'Eu, secretaire du Roy.	* M. Vildot est entré à soupée.	
	* Douze jours et demi de Juillet.	
	* Huit jours d'Aoust.	
* 20 Juillet.	* 20 Juillet.	
* M. Doigny, gentilhomme servant chez le Roy.	* M. Doigny est entré à soupée, et un garçon.	
* Vû le 23.	* Onze jours et demi de Juillet.	
	* Onze jours d'Aoust.	
		* 22 Juillet. (III.)
		* M. — est entré à diné.
		* Deux jours et demi pour Monsieur.
		* 22 Juillet

Persons in the livre de l'inspecteur.

27 Juillet.
M. Cocqueber, tresorier de France au bureau de finances de Chalons.

M de Perth, avocat de Reims.
Vu le 18.

Persons in the livre du depense, and also in the livre de l'inspecteur.

27 Juillet. (III.)
Mess. Cocqueber et du Perth, sont entrés à soupée.
Quatre jours et demi.
Vingt-un jours.

Persons in the livre du depense, but not in the livre de l'inspecteur.

22 Juillet. (III.)
M. — est entré à soupée.
Un jour et demi pour Monsieur.

26 Juillet. **
M. Boufflers est entré à soupée.
Cinq jours.

27 Juillet.
Mess. Isambert sont entrés à soupée.

28 Juillet. **
M. Jaron est entré à soupée.

29 Juillet. **
M. Paulmier à soupée.
Deux nuits

A O U S T 1748.

1 Aoust.
Monf. Roget, negociant de Lyon.

Monf. de la Font, gentilhomme près Coucy.
Vu le 3.

4 Aoust.
Monf. l'Abbé Coqueret, grand vicaire de Langre.

8 Aoust. (I.)
Monf. Bancarel, marchand de Rouen, et Mademoiselle sa fœur.

11 Aoust.
Madame de Fricourt, et Mademoiselle sa fille.

Vu le 12.

1 Aoust. (III)
Monf. Roger de Lyon est entré à soupée.
Onze jours et demi.

1 Aoust.
Monf. de la Fond est entré à soupée, et un garçon
Onze jours et demi pour Monsieur.

4 Aoust.
Monf. Caeret, archidiacre de Langre est entré à soupée et un garçon.
Seize jours pour Monsieur.

11 Aoust. (III.)
Madame de Fricourt et Mademoiselle sa fille.

21 Mad. et Mademoiselle sont partis au matin. — Neuf jours et demi.

3 Aoust. **
Monf. Piot de Courcelle est entré à diné.
Sept jours.

4 Aoust (III)
Monf. et Mad. Terion sont entrés à soupée.
31 Monf. et Mad. sont entrés à soupée.

8 Aoust (III.)
Monf. Stuart est entré à soupée.
Quatre jours et demi.

9 Aoust. (III)
Monf. — est entré à soupée, et Mademoiselle sa fœur.

22 Aoust

Persons in the livre de l'inspecteur. * *Persons in the livre du depense, and also in the livre de l'inspecteur.* * *Persons in the livre du depense, but not in the livre de l'inspecteur.*

		* 12 Aoust. (III.) * Monf. — est entré à diné. * Deux jours et demi.
		* 13 Aoust. (III.) * Monf. Petrus, notaire de St. Quintin, est entré à diné. * Dix-neuf jours d'Aoust. * Six jours de Sept.
		* 15 Aoust. (III.) * Monf. Rhenard est entré à soupée. * Sept jours et demi.
		* 15 Aoust. (III.) * Monf. de Leancourt, et Monf. Turpin sont entrés à diné. * Un de ces Messieurs est parti après diné. * Neuf jours pour Monf. Turpin.
Vû 12 Aoust.	* 17 Aoust. (IV.) * Monf. l'Abbé de la Goute, chanoine d'Autun, est entré à soupée, et un garçon. * 1 Sept. Monf. recommence à diné. * Monf. a payé, le 16 compris, et recommence le 17 Sept. à diné. * 3 Oct. Monf. a payé, et recommence le 3 à diné.	* 17 Aoust. * Monf. — et Monf. son gouverneur, et un garçon, sont entrés à diné. * Cinq jours.
Monf. l'Abbé de la Goute, chanoine de la cathedral d'Autun, et un domestique. Vû le 18.		
		* 15 Aoust. (III.) * Monf. Polonceau, religieux, est entré à soupée.
18 Aoust. Monf. Ifamberg, marchand d'Orleans, et M. son fils. Vû le 30.	* 27 Aoust. (III.) * Monf. Ifamberg est entré à diné, et M. son fils.	* 18 Aoust. (III.) * Monf. Lenin, et Mad. le Pecheur sont entrés à soupée. * 13 Monf. et Mad. sont partis après diné. * Monf. et Mad. sont de retour. * Vingt jours de Sept.
		* 28 Aoust. * Monf. — est entré à soupée, et un domestique. * Trois jours et demi pour Monsieur.
		* 30 Aoust. * Monf. — est entré à soupée.

S E P T E M B R E 1748.

* 2 Sept. (III.) * Monf. Riard est entré à soupée, et M. son fils. * 10 Monf. son fils est parti. * Huit jours. * Neuf jours et demi pour Monf.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

9 Sept.
Monf. Serpe et Mad. son epouse, et un garçon, sont entrés à diné.
Trois jours et demi pour Monf. et Mad.
18 Sept. **
Monf. Tassin le fils à diné.
22 Sept. (III.) (IV.) (VI.)
Monf. de Villette et Messieurs ses neveux, sont entrés.
Huit jours et demi pour ces Messieurs.
Monf. a payé la depense cy-dessus, et recommence le 1 Oct. à diné, et Monf. son neveu. Onze jours pour ces Mess.
23 Sept. (III.)
Monf. l'Abbé Piere est entré à soupée.
23 Sept. (III.)
Monf. Cousin est entré à soupée.
Deux jours et demi.
24 Sept. (III.)
Monf. l'Abbé de Longuet est entré à soupée. Dix-huit jours pour Monf.
25 Sept. (III.)
Monf. — est entré à soupée.
27 Sept.
Monf. Roger est entré à soupée.

O C T O B R E 1748.

7 Oct. (I)
Messieurs Tassin, freres, marchands d'Orleans.

Monf. Desjardins, marchand de Reims

15 Oct.
Monf. le Baron de la Verre d'Anvers.

19 Oct.
Monf. Haucouteau, marchand de Beauvois, et Mad. son epouse.

7 Oct. (III.)
Monf. Desjardins est entré à soupée.
Dix jours et demi.

15 Oct.
Monf. le Baron de la Verre est entré à soupée, avec deux domestiques.
Dix-sept jours d'Octobre.
Trente jours de Novembre.
Trente-un jours de Decembre.
Vingt-un jours de Janvier.

19 Oct.
Monf. et Mad. Haucouteau, et un garçon.
Deux jours pour Monf. Mad. et le garçon.

3 Oct.
Monf. — est entré à diné.

7 Oct. (III.) (V.)
Monf. — officier au regiment d'Orleans.

8 Oct. ** (III.)
Monf. Paulmier, et Madame Fouilleat, et Monf. son fils, ont soupée.
Sept jours.

23 Oct.
Monf. — est entré à diné.

Monf.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

N O V E M B R E 1748.

Monf. l'Abbé de la Goute, chanoine d'Autun.

7 Nov. (II.)
Monf. Cocqueber, tresorier de France au bureau de finances.

(II.)
Monf. de Perth. avocat de Reims,

Monf. Gault, marchand de Troyes.

15 Nov.
Monf. le Chevalier de Bonnairc d'Amiens.

20 Nov.
Monf. Berthelin et Monf. son fils, marchand de Troyes.

Mad. de la Porte, marchande de Troyes.
Vû le 22.

Vû le 25.
Monf. de Gardel, gentilhomme de Languedoc.

Monf. de Rue de Vandergueen en Languedoc.
Vû le 29,

30 Nov.
Monf. Doigny, gentilhomme de Laon.
Vû le 3 Dec.

6 Nov. (IV.)
Monf. l'Abbé de la Goute est entré à soupée.

Vingt-un jours et demi.
27 Nov. Monf. a payé, et recommence le 28 à diné.

N. B. Monf. l'Abbé paid and recommenced several times till the 15th Feb.

8 Nov. (II.)
Mess. Cocqueber et du Perth sont entrés et un garçon.
Vingt-trois jours de Novembre.
Trente-un jours de Decembre.
Un jour de Janvier.

7 Nov.
Monf. Ganault de Four est entré à diné.
Onze jours.

14 Nov. (III.) (IV.)
Monf. de Bonnairc est entré à diné.
Dix-sept jours de Novembre.
Quatorze jours de Decembre.
Monf. a payé le 14, et recommence le 15 à diné.
Dix-sept jours de Decembre.
Trente-un jours de Janvier.
Monf. a payé la somme, et recommence le 1 Fevrier.
Vingt-huit jours de Fevrier.
Trente-un jours de Mars.
Dix jours d'Avril.

20 Nov. (III)
Monf. Berthelin, marchand de Troyes, est entré à diné, et Monf. son fils.
Six jours pour Monf.
Quatre jours et demi pour Monf. son fils.

10 Nov.
Mad. de la Porte, marchande de Troyes, est entré à diné, et deux garçons.

28 Nov. (III.)
Monf. Garde de Languedoc.

24 Nov. (III)
Monf. de la Rue de Vandergueen en Languedoc.
Sept jours de Novembre.
Onze jours et demi de Decembre.

23 Nov.
Monf. de la Grange est entré à soupée, et un garçon.
Cinq jours pour Monf. et le garçon.

30 Nov.
Monf. Doigny de Laon est entré à soupée, et un garçon.
Huit jours et demi pour M. et le garçon.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

D E C E M B R E 1748.

Vû le 3 Dec.
Monf. Polonceau, marchand de Reims.
Vû le 11.

Monf. Riquet, receveur des Tailles de Nemours.

Monf. Dufresne au presidial d'Amiens.
Vû le 18.

21 Dec.
Monf. Piltour, marchand de Liège.

Monf. du Befne, huissier de la chambre du Roy, Madame son epouse et Madame sa fille

29 Dec.
Monf. de Bessanne, grand baillly de Vermondon de Reims.

Monf. du Fricourt, lieutenant au regiment de Conty infanterie.
Vû le 10 Janvier.

11 Dec.
Monf. Polonceau est entré à diné et un garçon.
Huit jours pour Monf. et le garçon.

12 Dec.
Monf. Riquet, receveur des Tailles de Nemours.
Huit jours et demi.

5 Dec.
Monf. du Frefne d'Amiens est entré à soupée et un garçon.
Vingt-cinq jours pour Monf. et le garçon.

20 Dec. (III.)
Monf. Deltour, marchand de Liège.
Onze jours.

21 Dec.
Monf. de Befne est entré à soupée Madame son epouse, Mademoiselle sa fille, et deux domestiques.
Trois jours pour Monf. et ces dames.
Trois jours pour les gens.

27 Dec. (III.)
Monf. de Bessanne est entré à diné.
Cinq jours de Decembre.
Trois jours de Janvier.
Dix-huit jours.
Onze jours de Fevrier.

28 Dec. (III.) (V.)
Monf. du Fricourt est entré à soupée.
Trois jours.

2 Dec. **
Monf. Caron et Monf. son fils sont arrivés.
Trois jours.

13 Dec. (III.)
Monf. de Champe, gentilhomme d'Auntun est entré à soupée.

19 Dec. **
Monf. Bouffers à soupée. Six jours.

J A N V I E R 1749.

3 Janvier.
Monf. Sprecher, capitaine au regiment Suisse de Planton.

Monf. Testraock, capitaine au dit regiment.

2 Janvier. (V.)
Monf. Sprecher.
Quatre jours et demi.

2 Janvier. (V.)
Monf. Testraock.
Quatre jours et demi.

Monf.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

3 Jan. 1749.
Monf. Mortely, lieutenant au dit regiment.

Monf. Conzyac, lieutenant au dit regiment.
Vû le 13.

20 Jan.
Monf. de Brianne, procureur du Roy de Bar sur Aubé.
Vû le 21.

23 Jan.
Monf. de la Combe de Tully en Limosin.

24 Janvier.
Monf. de Wist, capitaine Hollandois de la garnison d'Avallon.

26 Jan.
Monf. de l'Annoy, secretaire d'ambassade du ministre plenipotentiaire de la cour de Vienne, Madame son epouse, Mademoiselle sa belle-sœur, un secretaire, deux femmes de chambre et deux domestiques.

(I.)
Monf. de Brianne, procureur du Roy de Bar sur Aube.
Vû le 29.

31 Jan. (II.)
Monf. Tassin, marchand d'Orleans.

Monf. Desjardins, marchand de Reims.
Vû le 2 Fevrier

2. Janvier. (V.)
Monf. Mouttby lieutenant.
Quatre jours et demi.

2. Janvier. (V.)
Monf. Conzyac, lieutenant, un domestique, et cinq cheveaux.
Quatre jours et demi.

19 Janvier. (III.)
Monf. Brianne, procureur du Roy.
Douze jours et demi.

2 Janvier. (III.)
Monf. de la Combe de Tulle est entré à soupée.

24 Janvier.
Monf. de Wist, capitaine Hollandois et un garçon
Quatre jours pour Monf. et le garçon.

26 Janvier.
Monf. de Launoy, secretaire du ministre de la cour de Vienne, deux dames et un Monsieur, et un domestique.
Trois jours pour Monsieur.
Treize jours pour Mes Dames et le secretaire.

1 Fevrier. ** (III.)
Monf. Tassin est entré à dîné et Monf. son fils.
Quatorze jours.

31 Janvier. (III.)
Monf. Desjardins est entré à dîné,
Vingt-un jours.

F E V R I E R 1749.

4 Fevrier. (I.)
Monf. Boites maréchal des logis de chez le Roy.
Vû le 6.

7 Fevrier
Monf. Calou, officier de la Monnoy de Reims.

7 Fevrier. (III.)
Monf. Calou, officier de la Monnoys de Reims.

2 Fevrier. **
Monf. Aublet est entré à soupée.
Trois jours.

9 Fevrier.
Monf. — est entré à soupée et un garçon.
Un jour pour Monf.

Persons in the livre de l'inspecteur.

12 Fevrier.
Le chevalier de Stapleton, officier du regiment de Fitzjames.
Vu le 17.

Persons in the livre du depense, and also in the livre de l'inspecteur.

12 Fevrier,
Monf. Stapleton, officier dans le regiment de Fitzjames et un garçon.
Neuf jours et demi.

Persons in the livre du depense, but not in the livre de l'inspecteur.

23 Janvier. (III.)
Monf. — et Madame son epouse sont entrés.
Deux jours.

M A R S 1749.

3 Mars.
Monf. de la Panneterie, marchand de St. Quentin.

3 Mars
Monf. Fremin, avocat du Roy de Reims.
Vu le 3.

(I)
Monf. le Chevalier des Haules, capitaine du regiment de la Tour.

Monf. de Puget, lieutenant reformé du regiment de Picardie de Troyes.

Monf. Descourbons, procureur du Roi du bailliage de Troyes.
Vu le 8.

Monf. Berthelin, marchand de Troyes, pour affaire.
Vu le 12.

17 Mars.
Messieurs les Barons de Gudenel, Dachat Feubour, en Allemagne.

(I.)
Monf. Simon, cornete de la compagnie, de Roken.

(I.)
Monf. Gullin, lieutenant au regiment du Lue d'Aix en Provence.

Monf. Garde de Chaulny.
Vu le 19.

26 Mars
Monf. de Neufchatel, Seigneur de Neufchatel, en Boulonnois.
Vu le 26.

3 Mars. (III.)
Monf. de la Panneterie est entré à soupée.
Six jours et demi.

28 Fevrier. (III.)
Monf. Fremin, avocat du Roy de Reims.

2 Mars. (III) (V.)
Messr. de Puget, lieutenant reformé sont entrés.
Deux jours et demi, pour ces Messieurs.
Un jour.

7 Mars. (III.)
Monf. Mahon Descourbons, est entré à diné.

12 Mars. (III.)
Monf. Berthelin est entré à soupée.
Quatorze jours et demi.

17 Mars. (III.)
Messieurs les Barons de Gudenil, Dachat, Feubour, sont entrés.

17 Mars.
Monf. Garde est entré à soupée.
Douze jours pour Monf.

25 Mars.
Monf. de Neufchatel à Troli est entré à soupée. et un garçon.
Cinq jours et demi pour Monsieur.

9 Mars. **
Monf. Jaron est entré à diné.

11 Mars.
Monf. — est entré à diné.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

31 Mars.
Monf. le Baron de Grieffenclau, chanoine de l'église cathedral de Vermes.
Trois freres.

30 Mars.
Messieurs les Barons de Grieffenclau, trois freres, sont entrés à diné, et deux domestiques.

Deux jours de Mars.
Trente-un jours d'Avril.
Sept jours et demi de May.

— Mars.
Monf. Forrestier est entré à soupée et un garçon.

29 Mars. **
Monf. Tassin est entré à soupée et son fils.

Douze jours.
Six jours.

31 Mars. (III.)
Monf. de Courcelle est entré à soupée.

31 Mars. (III.)
Monf. l'Abbé Fabarot de Dijon, est entré à soupée.

Vingt-un jours et demi.

31 Mars.
Monf. — est entré à soupée.

A V R I L 1749.

1 Avril.
Monf. de Vaudiere, conseiller au parlement de Metz.

28 Mars.
Monf. de Vaudiere est entré à soupée, et un garçon.

Six jours et demi.

10 Avril.
Monf. Soumbroun, directeur-general des comptes des hopitaux de l'armée.

8 Avril (III.) (V.)
Monf. Soumbroun, directeur des comptes des hopitaux de l'armée.

Quatre jours.

11 Avril.
Monf. de l'Etant, commandant d'un brigade de carabiniers.

11 Avril.
Monf. l'Etant est entré à soupée, et un garçon.

Trois jours

Monf. Proucelle, president au presidial d'Amiens.

11 Avril.
Monf. Proucelle est entré à soupée, et un garçon.

Quinze jours et demi.

12 Avril. (II.)
Monf. Caron, lieutenant de la Maréchaussée de Senlis.

13 Avril. **
Monf. Caron est entré à soupée.

Sept jours.
Dix-neuf jours.

1 Avril. (III.)
Monf. Priquet est entré à soupée, et un Monsieur.

Trois jours et demi.

3 Avril. (III.)
Monf. de Courcelle est entrée à soupée.

8 Avril. (III.) (IV.)
Monf. Fremin est entrée à soupée.

Dix-sept jours et demi.
Trois jours.
Un jour et demi.

30 Avril.
Monf. Fremin recommence à diné.

Deux jours.

12 Avril. (III.)
Monf. — est entré à soupée.

13 Avril.

Persons in the livre de l'inspecteur.

13 Avril.
Monf. de Haine, gentilhomme de Boulogne.

Vû le 14 Avril.

14 Avril.
Monf. Halier, marchand de fer, Champenois.

17 Avril.
Monf. Godfroy, prevoft de Roy en Picardie.

18 Avril.
Monf. Jean Williams, negociant Anglois de Londres.

21 Avril. (II.)
Monf. l'Abbé de Longuet, grand vicaire de Langres.

Vû le 23 Avril.

28 Avril. (I.)
Monf. de Vert, gentilhomme Provençal.

Monf. Smelier, secretaire du Roy de Ro-fay en Brie, un domestique.

Monf. des Bars, maître de forge de la Forêt.

Vû le 30.

Persons in the livre du depense, and also in the livre de l'inspecteur.

13 Avril.
Monf. de Haine, gentilhomme de Bouloign, et un garçon.

Dix-sept jours et demi.

14 Avril.
Monf. Halier, marchand de fer, Champenois, et Monf. son fils.

Deux jours.

17 Avril. (III.)
M. Godfroy, prevoft de Roy.
Treize jours et demi d'Avril.
Un jour de May

17 Avril. (III.) (V.)
Monf. Jean Williams, negociant Anglois de Londre.

Cinq jours.

23 Avril.
Monf. l'Abbé de Longuet, est entré à diné, et un garçon.

Huit jours d'Avril.

Trente-un jours de May.

Trente jours de Juin.

28 Avril.
Monf. Smelier est entré à soupée, et un garçon.

Deux jours et demi d'Avril.

Neuf jours de May.

28 Avril. (III.)
Monf. de Barre, maître de forges de Sedan, est entré à soupée.

Persons in the livre du depense, but not in the livre de l'inspecteur.

23 Avril. (V.)
Monf. de Charanfay, capitaine de carabini- niers, est entré à soupée, et un gar- çon.

Trois jours et demi.

28 Avril.
Monf. — est entré à soupée.

M A Y 1749.

Vû le 30 Avril.
Monf. Martot, controleur-general des fi- nances de Champagne, et Monf. son fils.

Monf. Beaudouin, inspecteur des pont et chaussée d'Orleans.

Monf. Tassin, capitaine au regiment de Nice, avec congé.

(I.)
Monf. Cliquet Bourgeois de Reims.

(I.)
Monf. Mopinot, Bourgeois de Reims.
Vû le 5 May.

12 May.
Monf. Sanen negociant d'Anvers.

1 May. (III.)
Monf. Marlot de Reims est entré à sou- pée, et Monf. son fils.

Quinze jours et demi.

1 May. (III.)
Monf. Bodouin est entré à soupée.

Treize jours et demi.

1 May. ** (III.)
Monf. Tassin, capitaine au regiment de Nice.

Quatre jours.

11 May. (III.)
Monf. Sanen est entré à diné.

Douze jours et demi.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

12 May, 1749.
Monf. Maignier, negociant de Lille en Flandre.

(I.)
Monf. l'Abbé de Longuay, grand-vicaire de Langre.

Monf. Fremin, Avocat du roi, au pre-
sidial de Reims.

Vû le 14 May.

17 May. (II.)
Monf. de Daupierre, officier reformé du
regiment roy étranger d'Abbeville.

(II.)
Monf. Duhamel, Gentilhomme de Vitry
à Champagne.

(I.)
Monf. Winckrelman d'Elfort de May-
ance.

Vû le 19 May

20 May
Monf. de Pollonfau, directeur de tabac
de Reims.

Vû le 23 May.

29 May.
Monf. Hiesmance et son fils, negocians
d'Anvers.

Monf. Velmin, secretaire de Monf. des
Pierre, commissaire des guerres de
Lille.

Monf. de Britto, negociant Portugois.

11 May. (III.)
Monf. Maignet, negociant de Lille.
Douze jours et demi.

10 May. (III.)
Monf. Fremin est entré à soupée.
Est parti le 9 Juin.

18 May. (III.)
Monf. de Daupierre d'Abbeville est en-
tré à diné, et un domestique.
Six jours pour Monf.

18 May.
Monf. Duhamel est entré à diné.
Est parti le 22 d'Aoust.

19 May. (III.)
Monf. Polonceau est entré à soupée.
Cinq jours et demi.

29 May. **
Monf. Hiesmance a soupé, et Monf.
son fils.
Dix-sept jours.

29 May. (III.)
Monf. Villemín, secretaire des Mess.
Pierre.
Est parti le 25 de Juin.

29 May. (III.)
Monf. de Britto, marchand Portugois.
Est parti le 11 d'Aoust.

13 May. (III.)
Monf. Duchesne, bourgeois d'Orleans,
est entré à soupée.
Dix jours et demi.

15 May. (III.)
Monf. — est entré à diné.

16 May
Monf. de Besne est entré à diné, Mad. et
Mademoiselle sa fille, une femme de
chambre et un domestique.
Un jour pour Mad. et Mademoiselle.
Trois jours pour Monsieur.

17 May. (III.)
Monf. — est entré à soupée.

21 May. (III.)
Monf. — est entré à soupée.
Trois jours.

22 May. (III.) **
Monf. Caron est entré à soupée.
Sept jours.

27 May. (III.) (VI.)
Monf. de la Combe, avocat du Roi, sont
entrés à diné.
Huit jours pour ces Messrs.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur

Monf. Duchemin, negociant de Laval.

1 Juin.
Monf. Duchemin, marchand de Laval,
et un garçon.
Trois jours et demi.

J U I N 1749.

2 Juin. (II.)
Monf. Boufflers, marchand d'Aumale,

Monf. de Clerc, negociant de Rouen.
Vû le 9 Juin.

3 Juin. ** (III.)
Monf. Boufflers est entré à soupée.
Six jours.

31 May. ** (III.)
Monf. le Clerc est entré à soupée.
Sept jours.

4 Juin.
Monf. Vairon Doigny est entré à diné.
Dix-sept jours.

8 Juin. **
Monf. Caron a soupé.
Six jours.

8 Juin. **
M. Tassin a diné et soupé.
Huit jours.

9 Juin. (III.)
Monf. Badouin est entré à soupée.
Deux jours.

9 Juin. (III.)
Monf. Desjardin est entré à soupée.
Neuf jours et demi.

10 Juin. (III.)
Monf. — est entré à soupée.

12 Juin. (III.)
Monf. de Brevery est entré à soupée, et
Mademoiselle.
Dix-huit jours et demi pour Monsieur
et Mademoiselle.

16 Juin.
Monf. Cocquery des Combles est entré
à diné, et un garçon.
Quinze jours de Juin.
Trois jours.

19 Juin. ** (III.)
Monf. Paulmier et Madame Fouilliet
ont soupé.

19 Juin. (III.)
Messrs. Polonceau sont entrés à soupée.
Huit jours et demi.

23 Juin.

Persons in the livre de l'inspecteur.

23 Juin.
Monf. Delannoy, garde du corps du roi,
chevalier de St. Louis.
Vû le 23 Juin.

*Persons in the livre du depense, and
also in the livre de l'inspecteur.*

22 Juin, ** (V.)
Monf. de l'Aunoy est entré à diné.
Trois jours.

*Persons in the livre du depense, but
not in the livre de l'inspecteur.*

25 Juin. **
Monf. Caron et son fils.
Six jours.

25 Juin.
Monf. de Befne est entré à soupée, et un
garçon.
Deux jours et demi.

26 Juin. (III.)
Monf. Lombar est entré à soupée.
Quatre jours et demi.

28 Juin.
Monf. Moncomble.
Sept jours.

J U I L L E T 1749.

1 Juillet. (I)
Monf. Henin, tresorier de France de
Charleville.

Monf. le Pecheur, Bourgeois de Reims.
Vû le 2 Juillet.

Monf. l'Abbé Anfard, chanoine et doyen
de Lille en Flandres.

(I.)
Le Chevalier de Haulle, lieutenant du
regiment Danguin.
Vû le Sept Juillet.

14 Juillet.
Monf. Blondelle, negociant de Rotterdam
en Hollande.

15 Juillet. (I.)
Monf. le Smelier, Secretaire du roi de
Rofay en Brie.
Vû le 19 Juillet.

30 Juillet.
Monf. de Vaudier, conseiller au parle-
ment de Metz.
Vû le 30 Juillet.

1 Juillet. (III.)
Monf. le Pecheur, et Monf. — sont
entrés à soupée.
Quinze jours pour ces Messrs.

4 Juillet.
Monf. Anfard est entré à soupée, et un
garçon.
Vingt-sept jours et demi de Juillet.
Dix-huit jours d'Aoust.

14 Juillet.
Monf. Smelier est entré à diné et un gar-
çon.

30 Juillet. (III.)
Monf. de Vaudiere est entré à diné.
Vingt-trois jours d'Aoust.

29 Juin. **
Monf. Jaron a soupé.
Trois jours.
Deux jours.

29 Juin. (III.)
Monf. Blondelle est entré à soupée.
Un jour et demi.
Quatre jours.

4 Juillet. (III.)
Monf. — est entré à soupée.

6 Juillet.
Monf. Caron est entré à soupée.
Deux jours.

20 Juillet.
Monf. Camusa est entré à soupée.

21 Juillet. ** (III.)
Monf. et Mad. Blanchon ont soupée.

6 Aoust.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

A O U S T 1749.

6 Aoust.
Monf. de Blu, directeur des fermes de Dijon.

7 Aoust.
Monf. de Vauvray, interessé de Rhetel en Champagne.
Vu le 5 Aoust.

15 Aoust. (II)
Monf. Courard, capitaine de vaisseau du roy, au departement de Brest.

31 Aoust.
Monf. l'Abbé de Clery, grand chantre de Tour et Monf. son neveu.

Monf. l'Abbé Louis, chanoine de Toal.

Monf. Cousin, controlleur des domaines à Allemagne.

31 Aoust.
Monf. Cointon, preteur de Volf, en Allemagne.

6 Aoust. (III.)
Monf. de Bellevu, directeur des fermes de Dijon.

7 Aoust. (III.)
Monf. de Vauvray est entré à soupée.
Dix-sept jours et demi.

17 Aoust. (III.)
Monf. Courard, capitaine du Vaisseau du departement de Brest.
Seize jours.

31 Aoust.
Monf. l'Abbé de Clery et un garçon.
Seize jours pour Monsieur.

31 Aoust.
Monf. Louis, chanoine, et Monf. son neveu.
Seize jours pour ces Messieurs.

27 Aoust.
Monf. Cousin est entré à soupée.
Treize jours

31 Aoust. (III.) (IV.)
Monf. de Cointon, preteur royal d'Haguenau est entré.
Trente jours de Septembre.
Trente-un jours d'Octobre.
Monf. a payé la somme, et recommence le 1 Novembre à diné.
Trente jours de Novembre.
A payé, et recommence le premier de Decembre.
Trente-un jours de Decembre.
Monf. a payé le dernier de Decembre, et recommence le premier Janvier.

6 Aoust. **
Monf. Caron à soupée.

Douze jours.

10 Aoust. (III.)
Monf. Dorigny est entré à soupée.
Quatre-jours.

14 Aoust.
Monf. l'Abbé de Masterand, chanoine de St. Omer, et un garçon.

S E P T E M B R E 1749.

3 Septembre.
Monf. le Baron Desséars, et Monf. le Jeune auprès de Vreux en Normandie.

3 Septembre.
Monf. le Baron Desséars est entré à diné,
Monf. le Jeune et deux domestiques.
Vingt jours de Septembre.
Quatorze jours d'Octobre.

Persons in the livre de l'inspecteur.

4 Septembre.

Monf. Seguin, negociant de Chateau gaudier.

Monf. Beaufrois, curé auprès d'Amiens.
Vu le 4 Septembre.

13 Septembre.
Monf. Lambard, et son neveu, negociant d'Anvers.

Monf. Villermont, gentilhomme d'Epernay.

14 Septembre.
Monf. Meunier de St. Clou, et Monf. son fils.

15 Septembre.
Monf. de Carriere, capitaine au regiment de Lorraine infanterie.
Vu le 23.

Persons in the livre du depense, and also in the livre de l'inspecteur.

2 Septembre. (III.)
Monf. Sequin, marchand, est entré à soupée.

Neuf jours et demi.
Cinq jours et demi.
Quatorze jours d'Octobre.

4 Septembre. ** (III.)
Monf. Bofroy, curé de ——— est entré à soupée.

Cinq jours.

12 Septembre. (III.)
Monf. Lombard, et Monf. ——— sont entrés.

Onze jours pour ces Messrs.

9 Septembre. (III.)
Monf. Villermont est entré à soupée.

Six jours et demi.

13 Septembre. (III.)
Monf. Meunier, et Monf. son fils, sont entrés à soupée.

15 Septembre. (III.)
Monf. de Carriere est entré à soupée.
Quinze jours et demi de Septembre.
Trente-un jours d'Octobre.
Trente-un jours de Novembre.
Trente-un jours de Decembre.

Persons in the livre du depense, but not in the livre de l'inspecteur.

9 Septembre. (III.)
Monf. ——— et Mad. son épouse, sont entrés à soupée.

11 Septembre. (III.)
Monf. Dantpiere est entré à diné.
Quatre jours.

13 Septembre. **
Monf. Meunier est entré à soupée, et Monf. son fils.
Huit jours pour la chambre.

14 Septembre. **
Messrs. Bouché sont entrés à diné.
Trois jours.

16 Septembre. **
Monf. de Couray.
Deux jours.

17 Septembre. ** (III.)
Monf. le Curé est entré à diné, et six Messieurs.
Deux jours.

17 Septembre. **
Monf. Jaron à soupée.

20 Septembre. **
Monf. Tassia.

OCTOBRE 1749.

(I.) Vu le 8 Octobre.
Monf. de Bellevu, directeur des fermes de Dijon.

1 Octobre. ** (III.)
Monf. Veuille et Monf. Fromand, ont diné et soupée.

Persons in the livre de l'inspecteur.

8 Octobre.
Monf. Vitte, seigneur de Brunelle d'Anvers.

Vû le 13 Oct.

19 Octobre. (I)
Monf. Tassin freres, negociants d'Orléans.

Monf. Desjardin, marchand de Reims.
Vû le 20 Oct.

21 Octobre.
Monf. Conard, officier de marine, du département de Brest.

22 Octobre.
Mad. Berthelin, Monf. son fils, et Made-
moiselle sa fille, marchande à Troyes
en Champagne.

Monf. Blanchard, curé de St. Jacques de
Melun.

22 Octobre.
Monf. Formand, notaire à Meulan.

Monf. Veteuille, marchand à Meulan.
Vû le 30 Oct.

*Persons in the livre du depense, and
also in the livre de l'inspecteur.*

6 Octobre.
Monf. de Vitte, seigneur de Bauvill d'-
Anvers, est entré à soupée et un garçon.
Huit jours et demi.

18 Octobre, (III.)
Monf. Desjardin est entré à soupée.
Six jours et demi.

20 Octobre. (III) (V.)
Monf. Conrar est entré à soupée.
Cinq jours et demi.

22 Octobre. (III.)
Mad. Berthelin, Monf. son fils, et Made-
moiselle sa fille, sont entrés.

22 Octobre. (III.)
Monf. le curé est entré à soupée.

22 Octobre.
Monf. Fromand.

Monf. Veteuille.

*Persons in the livre du depense, but
not in the livre de l'inspecteur.*

9 Octobre. ** (III.)
Monf. Paulmier, et Mad. Fouliete sont
entrés. Cinq jours.

12 Octobre. (III.)
Monf. — et Mad. son épouse.

20 Octobre.
Monf. Dispages et Monf. son fils, sont
entrés à soupée, et un garçon.
Onze jours et demi d'Octobre pour ces
Messieurs.
Deux jours de Novembre pour ces Messrs.

N O V E M B R E 1749.

9 Nov.
Monf. de Bellevus, directeur des fermes
de Dijon.

30 Octobre. (III.)
Monf. de Bellevue est entré à soupée.
Un jour et demi d'Octobre.
Trente jours de Novembre.
Trente-un jours de Decembre.

7 Nov. (III.)
Monf. — est entré à soupée.
Huit jours.

9 Nov.

Persons in the livre de l'inspecteur.

Persons in the livre du depense, and also in the livre de l'inspecteur.

Persons in the livre du depense, but not in the livre de l'inspecteur.

8 Nov.
Monf. Cambronne et Le Februre, marchand de St. Quentin.

7 Nov. (III.) (IV.)
Monf. Cambronne, et Monf. Le Februre, sont entrés à soupée.
17 Nov. Neuf jours et demi pour ces Messieurs.
Messrs. Cambronne et Februre, recommence à diné.
Dix jours pour ces Messieurs.

8 Nov. (I.)
Monf. Dumontier, marchand à Chaunoy.

9 Nov. (III.)
Monf. de Valcourt est entré à soupée.
Vingt-un jours de Novembre.
Trente-un jours de Decembre.

9 Nov.
Monf. de Valcours, capitaine au regiment de la Rochefoucault cavalerie.
Vu le 10 Nov.

10 Nov. (II.)
Monf. Coquebert, tresorier de France, au bureau des finances de Reims, et Monf. de Perth, avocat en parlement de Reims.

13 Nov.
Messrs. Coquebert, et du Perth, sont entrés à soupée, et un garçon.
Dix-sept jours et demi de Nov.
Trente-un jours de Decembre.

16 Nov.
Monf. de Sentent, capitaine au regiment d'Anguin infantrie.

16 Nov. (III.)
Monf. de Sentent, capitaine au regiment, est entré à soupée.
Quatre jours et demi.
Trois-jours et demi.

D E C E M B R E 1749

Monf. du Chesne
Vu le 5 Dec.

2 Dec. (III.)
Monf. du Chesne, est entré à soupée.
Sept jours et demi.

7 Dec.
Monf. le Chevalier de Surinbrune de Londres.
Vu le 10.

7 Dec. (III.)
Monf. le Chevalier de Surinbrune de Londres.
Trois jours.

12 Dec.
Monf. Hunaine, Seigneur de Vieuville.

12 Dec.
Monf. de Vieville est entré à soupée, et un garçon.
Deux jours et demi pour Monsieur.
Monf. son fils a couché trois nuits.

5 Dec. (III.)
Monf. Jouvan est entré à diné.

5 Dec.
Monf. — est entré à soupée, et deux domestiques.
Deux jours.

16 Nov. **
Monf. Boufflers, à soupée.
Six jours.

24 Nov.
Monf. — est entré à soupée, et un garçon.
Trois jours et demi.

Persons in the livre de l'inspecteur. ♦ *Persons in the livre du dépense, and also in the livre de l'inspecteur.* ♦ *Persons in the livre du dépense, but not in the livre de l'inspecteur.*

13 Dec.
M. Rillard de Verneuil, écuyer, seigneur de Verneuil.

13 Dec.
Monf. Soyer, Garde-marteau de la mai-
tresse des eaux et forêts de Reims.—
Monf. Savar, greffier de la ditte mai-
tresse.

24 Dec.
Monf. Pamentier, receveur des Aides de
Montfort.

26 Dec. (I.)
Monf. Pauline, Lieutenant Alestion de
Nemours.

26 Dec. (I.)
Monf. Moncomble, procureur du Roi.
de Nemours.

Vu le 29.

13 Dec. (III.)
Monf. Rillard de Laon est entré à sou-
pée.

13 Dec. (III.)
Messrs. Soyer et Savar sont entrés à sou-
pée.
Quatre jours et demi.

24 Dec. (III.)
Monf. Parmentier est entré à soupée.
Quatre jours et demi.

13 Dec. (III.)
Monf. Rillard de Laon est entré à sou-
pée.

13 Dec. (III.)
Messrs. Soyer et Savar sont entrés à sou-
pée.
Quatre jours et demi.

24 Dec. (III.)
Monf. Parmentier est entré à soupée.
Quatre jours et demi.

26 Dec. (III.)
Monf. Paulmier. et Monf. de la Comb,
sont entrés à soupée.

Quatre jours.

Persons in Godfroi's second book, whose names are not taken into the pre-
ceeding excerpts, as they appear not to have lodged, but only to have
eat, in his house.

Monf. Maegret.
Monf. Paulmier.
Monf. Gueron et Monf. Doucet.

♦ Monf. Blanchon.
♦ Monf. Aube, à soupée.
♦ Monf. Augay.

♦ Monf. Jaron.
♦ Monf. de Launoi.
♦ Monf. l'Abbé Descourtes.

E R R A T.

Delete the mark No. (II.) upon article 2d, page 100.

From the preceeding excerpts the following OBSERVATIONS will occur :

1^{mo}, It is not surprising that Sir John Stewart and his company should have been in the police-book of Godfroi, without any corresponding account in the *livre du depense*. There are many instances of persons, and even of families, lodging in Godfroi's in the above period, whose names are entered in the police-book, but who have no account or entry in either of the household-books. These instances are marked (I.) A considerable number of them are such as admit of no dispute, others will be disputed by the pursuers, because there are articles stated in the household-books, as furnished to anonymous persons or companies, whose entries seem to correspond, either in the precise day, or nearly in date to the entries of persons named in the police-book, which entries, therefore, it will be said, apply to the same persons. For example, on the 22d February 1747, a person called Mr. Labstide appears marked in the police-book, and, of the same date, there is an entry in the *livre du depense* in these words, " Mr. est entré à diné."—Upon the 14th August, same year, a person called Mr. le Chevalier de Beaupuis de l'Amerique, appears entered in the police-book, and, upon the 8th August, six days before, there is an entry in the *livre du depense*, in these words, " Mr. est entré à soupée."—Upon the 8th August 1748, " Mr. Bancarel, Marchand de Rouen, et Mademoiselle sa sœur," are entered in the police-book, and, the day after, viz. 9th August, there is an article in the *livre du depense* in these words, " Mr. est entré à soupée, et Mademoiselle sa sœur."—Between the 5th and the 12th May 1747, there is entered in the police-book, " Mr. de Riegenbery de Mayence ;" and there is in the *livre du depense*, in the first place, an article of date 5th May, in these words, " Mr. est entré à soupée," and this gentleman appears to have staid two days. Secondly, an article 8th May, " Mr. est entré à soupée. Thirdly, an article 10th May, " Mr. est entré à soupé," who appears to have staid nine days. Any one of these, it will be said, may apply to Mr. de Rieugenbery.

To these, and other instances of the same kind, one general answer occurs, that the application of them depends solely upon conjecture ; and as it is certain that the *livre de police* did not contain one half of the companies or persons who came to the house, this conjecture, tho' the dates should correspond, must be much oftener wrong than right. But, more particularly, with regard to the first instance above pointed out, it surely is very improbable that Mr. Labstide should have been

inserted by his name upon the 22d February in the police-book, and yet that, in opening his account in the household-book, of the very same date, a blank should have been left for his name. The presumption therefore is, that Mr. Labstide had no account opened for him, and that another person, whose name was unknown, came to the inn upon the 22d February, and was entered blank in the household-book. The same observation is to be made upon every other blank article in the household-book, which is endeavoured to be applied to a nominatim article of the same date in the police-book.

As to the second instance of Mr. Beaupuis, there is no good reason for presuming that a blank article, of date 8th August in the *livre du depense*, relates to a person who is marked as entered in the police-book as far down as the 14th August, without any circumstances whatever to show a connexion between them, the more especially, as it appears to have been Godfroi's universal practice to fill up the names of persons who had been entered blank in his *livre du depense*, when informed of them during their residence in his hotel, as appears from the excerpts subjoined to the defender's memorial, p. 65, No. XIV.

The third instance of Mr. Bancarel and his sister, 8th August 1748, has an apparent connexion with the blank article of the 9th August, in which a gentleman and his sister are marked in the household-book of that date, yet it is highly improbable that they are the same persons, for this reason, that it is almost inconceivable that Mr. Bancarel and his sister should have been known upon the 8th, so as to be inserted by name in the police-book, and at the same time unknown upon the 9th, so as to be entered blank in the household-book.

And as to the last instance of Mr. de Riegenbery, to whom any one of three blank articles in the household-book may be said equally to apply, this very circumstance (of which several other examples occur in the books) shows very plainly, that none of those conjectural applications are, in the smallest degree, to be relied on; for, amidst the variety of articles which may thus apply in point of time to Mr. de Riegenbery, how is it possible to fix on any one of them? Supposing one of the three blank persons who are entered in the household-book, from the 5th to the 10th May, to have been Mr. Riegenbery, it is plain that there must have been other two persons at the time in the house, whose names are not known. Now, let it be supposed, that no account had been opened for two of the persons, and that no article had appeared in the household-book, except that of the 10th May, for the person who staid nine days, this might have afforded room for a conjecture, or pretended remembrance, on the part of Mr. Godfroi, at some distant period of time, that the account 10th May, applied to Mr. Riegenbery, and that, of course, Mr. Riegenbery entered to his house upon the

the 10th May, and staid nine days from that date; and yet the accident which has happened, of opening two other accounts for blank persons, about the same time, one of whom staid only two days, and the other probably not so long, as the time of his departure is not mentioned, shows how precarious this conjecture would have been.

In the appendix to the memorial, No. XVI. the defender published a list of those persons who, upon a comparison of the books, appeared to him to be in the *livre de l'inspecteur* for the years 1747, 1748, and 1749, without any corresponding entries in the household-books. This list, consisting of thirty-five instances, was said by the pursuers to be erroneous in a variety of particulars; but, upon the most accurate investigation of the books, it appears that there are only two mistakes in it, which the agent for the defender was very naturally led into, from the way in which the articles are stated in the books themselves. The first is an article 3d July 1747, respecting le Sieur de Sarasin, Seigneur de Germain-Villier en Lorrain. This gentleman appears to have been entered in the police-book on the 3d July, or, at least, between the 3d and the 7th July, and there is no article in the household-books corresponding to him in date; however, the defender does now observe an article as far down as the 25th July, which has some appearance of corresponding to him, and which, that the pursuers may have all advantage, he shall suppose to be relative to this gentleman. The article is in these words, "25 Juillet, Mr. de Germain-Villiers est entré à diné." The second instance is that of Mr. Fouillet, 3d February 1748. This person was omitted by mistake, because he had no separate account in the household-book, but happened to be included in the account of another man, in these words, "2d Fevrier, Mr. Paulmier et Fouillet sont entrés à soupée." But, to make up for these two persons, whom the defender is thus willing to strike out of the list, it appears, that, in his former examination of the books, he had overlooked some others who ought to have been in it; so that, in reality, the instances of persons in the police-book, and not in the household-books, are more in number than he formerly made them.

2do, The accounts in the household-book do not contain the exact ^{Observation} dates of the arrival of guests at the inn, there being many instances ^{2d.} of persons inscribed in the police-book and living in the hotel several days before any account is opened for them in the household-book, so that both Godfroi and his wife have sworn falsely as to the time and manner of opening accounts in their household-book. These instances are marked (II.) in the excerpts; so that, though the blank articles in July 1748 begin on the 4th of that month, it does not necessarily follow that the 4th was the date of the arrival of the persons to whom it applies.

Observation
3d.

3tio, No presumption arises against Sir John Stewart and his company from the circumstance of their having no servants, and from no articles being charged to servants in the anonymous account 4th July 1748; for the pursuers are mistaken in saying that this is an unusual thing, as people seldom come to Paris without bringing servants along with them, or hiring servants when there. From the face of Godfroi's books it appears, that many of the companies who came to his house in the above period, some of them appearing from their designations to be persons of consideration, and of both sexes, were precisely in the same situation, no articles being charged in their accounts for servants. The instances of this kind are marked (III.) At the same time it will be observed, that the argument is entirely inconclusive in another respect; for though no mention is made of servants in these accounts, it does by no means follow that the companies, to which they belonged, had not *hired servants* or *valets de place*, such servants being always maintained on board-wages: so that the anonymous company in July 1748 may very possibly have had servants, though they do not appear in the account.

Observation
4th.

4to, A variety of instances occur of people having paid their bills and recommenced. These are marked (IV.); but from beginning to end of the book there is no instance of a person's account being opened blank, and that account closed, and opened again, with the words, *Mr. a payé et recommencé*, after the person's name was known to Godfroi or his wife, without the name being filled up.—The instances mentioned by the pursuers are nothing to the purpose. De La Gout's name was mentioned in the title of the account, and there was no occasion to repeat it.—The other person's name was unknown at his entry, and it must have remained so when he went away for one day and returned, and even when he left the inn; at least the pursuers cannot show that it was known.

Observation
5th.

5to, Godfroi, in order to support his books, has sworn falsely, by saying he is more exact in marking officers and foreigners in his police-book than others. From the instances marked (V.) it appears, that he was not careful in marking officers or foreigners upon the day of their arrival, but that they were allowed to remain as long as other people in the inn, without being entered in the police-book.

Observation
6th.

6to, The words, *Mr. ——— sont entrés, et Mr. à payé et recommencé*, do not show that there was only one man in the company to which the account 4th July applies. There are many instances of accounts being opened in the same manner, and also of accounts closed with summing up the number of days, without any addition of *Messrs.* though they appear clearly to have applied to two or more men.—Instances of this kind are marked (VI.). But the pursuers cannot point

point out a single instance of an account applying to women where they are not specially mentioned or described by their sex.

7thimo, It is not extraordinary that the anonymous company in Ju-^{Observation}ly 1748 should have no corresponding entry in the police-book. There^{7th} are more than 180 instances of accounts or entries in the household-books, many of them for companies of three or more persons, and who staid above ten days in the inn, for which there are not corresponding entries in the police-book. The whole third column is composed of instances of this kind; and therefore it was unnecessary to put any particular mark upon them. All these instances are such as can admit of no dispute, except a very few, which may possibly be disputed for the reason above given, that some of the blanks may be filled up by a conjecture taken from date and other circumstances; but still this is no other than mere conjecture, and there will remain much more than three-fourths of the instances undisputed.

8^{vo}, Neither the police-book, nor the household-books, nor all of^{Observation} them taken together, can afford any certain rule or evidence for de-^{8th}termining what number of persons, or what particular persons, were in the house at any given time. The police-book is admitted on all hands to be defective, and does not, indeed, contain entries for many more than the half of those who are marked in the household-books. On the other hand, the household-books appear also, from the facts stated under the first observation, to be defective, and not to contain all the persons and companies who came to the house. The conclusion therefore is plain, that from the whole books put together, no certain knowledge can be obtained of the companies that were at any one time in the house.

But what renders this matter still clearer is, that Madame Godfroi says, "her hotel was in 1748, as it is at present, very much fre-^{Purf. pr. 833,}quented; in so much that, in order to be sure of a lodging in her^{D.} house, it was often necessary to write before-hand to engage it. But "this did not hinder, that people *some times* found a lodging there, "without having pre-engaged it.—That, in 1748, there were fifteen — G. "rooms *to let* in her hotel, four of which had two beds, independent "of lodging for servants, and that at present, by an addition which "has been made to the house, they have ten more rooms, and as "many closets, and that, commonly, all the rooms of the hotel are "full, from the beginning of the year to the end of it, and sometimes "she could not receive all those who offered."—And Godfroi swears, — 29, C. "his hotel was always very much frequented, and that he believes "there were at that time, (i. e. upon the 4th July 1748,) a "great many people in his house, because he gave to these stran- "gers a lodging only in the second storey, over that which is

Part 3d, p.
130.

" at present the remise, or coach-house of his hotel." Now, if this account of the matter be true, which the pursuers cannot controvert, without giving up the oaths of Godfroi and his wife, it is quite irreconcilable with the supposition, either of the police-book or of the household-books containing the entries of all persons who came to the hotel. The pursuers, in their memorial, have fixed upon one particular day, viz. the 29th July 1748, when they endeavour to show, from the books, that there were eleven lodgers in the house.—In this list they have included one person, Mr. Maigret, who rather appears, from the book, to have only got his meat in the house, and not to have lodged in it. But, at any rate, although, in one or two particular instances, and for the space of a day or two, they may be able to show, from the books, that ten or eleven persons have been in the house, yet, for the most part, the number of lodgers, so far as they can be gathered from the books, do not exceed four, sometimes not above two, and seldom above five or six. On the 4th of July 1748, the utmost number that can be made out from the books is two, besides the anonymous company, viz. Mr. Ressette and Mr. Descourbons ; for, as to Mr. Maigret, who is also by mistake mentioned by the defender in his memorial as in the house at that time, it would now seem, upon a more narrow investigation of the book, that he was only an eater, and not a lodger, in the house. Yet it appears, from the oath of Mr. Godfroi, that he understood his house to be at that time quite full, because he gave Sir John Stewart and his company one of his worst apartments, viz. a lodging in the second floor. It is true, that the coach-house was not then immediately below it, but still it was an apartment on the second floor, and one of the worst in the house, for so Godfroi's oath implies, which assigns the fulness of his house as a reason for giving them this apartment. And as the pursuers cannot show that at any one time the house was full, much less that it was generally so, or that Madame Godfroi could not receive all those who offered, this is certain evidence, either of her falsehood, or that the books do not contain entries for all her guests, as alledged by the pursuers.

Observation
9th.

9no. From investigation of the two household-books, produced by Godfroi, it appears very clearly, that if Sir John Stewart and his company chose to be entertained at a higher rate than the ordinary of the house, he did not fail to have any account or entry in any of these books. One of them is a book which was only kept for particular persons, who were entertained below the ordinary, or who did not sleep in the house, and, therefore, must be entirely put out of the question. The other book, called the *livre du depense*, and which contains the blank articles in July 1748, is a book which appears to have been kept singly for those who were entertained *at the ordinary* of the house.

house. It does not, from beginning to end, contain one single account for any person, or company, whose eating was above the ordinary of three livres per day. It is true that, in some few instances, a person, or company, who entered at the ordinary of the house, and continued to live so, appears, at a particular time, to have called for *bonne chere*, (i. e. a meal better than the ordinary) but in no one instance does it appear, that any person or company is marked in that book as entered in the house, or as living in the house, beyond the ordinary rate of three livres per day, including meat, lodging, and a bottle of wine for each person.

Madame Godfroi depones, "That if any person chose to eat at a higher price than the ordinary, he was served at what price he pleased." And it is impossible to imagine that no person ever came to the inn who chose to live above the ordinary. Nothing can be more mean, nor indeed more disgusting to an English palate, than the common fare of a French inn, such as Godfroi's. It is a common practice, especially when strangers enter to lodge at an inn, to ask them whether they are to eat at the *table d'hôte* (i. e. the ordinary) or in what other manner they chuse to be entertained. It is an acknowledged fact, that Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit did not eat at the *table d'hôte*, but in their own apartment; the question therefore is, Whether it is more probable that the entertainment furnished to them in their own apartment was the same with the ordinary fare of the house, prepared for the *table d'hôte*, or if it was such as they chose to bespeak, and of that kind which would naturally occur to an English company? To suppose the former is most unnatural, and what, it is believed, never happened to any other English company of the same fashion, especially where ladies were of the number; and if the latter was the fact, they fell of course to be charged in a different manner from the ordinary, and, consequently, not to enter into the *livre du depense*. It is universally known that British subjects, travelling in France, are supposed to be well able to pay, and are, for the most part, charged accordingly.

Madame Godfroi has deponed, "That in the year 1748, as at present, there came *English* or other foreigners to her house; —that she knows, when English gentlemen or ladies come to lodge in her house, it is ordinarily for a few days, and until they have found lodgings else where."—And Godfroi depones, "The English come but seldom to his house, and remain but for a short time, *excepting merchants*, his house being situated in the quarter of commerce."—From these depositions, if they can be credited in any thing, it appears, that English people of both sexes did sometimes frequent this hotel in the year 1748, and before and after that time, though

though they are said to have staid but a short time, except merchants; yet, from his whole books, during the space of eight years, there is not one English woman marked in Godfroi's household-book, which must have been owing to this, that, as they did not chuse to eat at the *table d'hôte*, they would be charged differently, so no account would be opened for them in these books.—There are only four instances of men appearing from the Books to have lodged there, during the space of eight years;—one of them, Mr. Wright, is in the same situation with the women, he is acknowledged to have no account in any household-book:—Another of them, one Williams a merchant, appears to have been indisposed, and living on milk-soup, which is stated to his account, over and above his three livres a day for the ordinary.—Sir John Stewart, being quite alone in August 1748, would either eat at the *table d'hôte*, on account of company, or not in the house, which last probably was the case, from the very small quantity of wine stated to him, so there could be no separate account opened for him.—Another Englishman, Chevalier Surinbrune de Londre, and two servants, who staid only three days, certainly never did eat once in the house, as there is not a single article of extraordinary for wine stated to his account, or any thing else, but some pieces of wood to his fire: And this being the case, he fell of course to be stated in the *livre du depense* at three livres per day, as it appears from the deposition of Godfroi, that this was the rule of charging such guests as lodged without eating in the house, as well as those who eat at the *table d'hôte*.

The pursuers endeavoured to account for Wright and others having no account in the household-book, by supposing that they might have wrote before-hand to engage their rooms, but not having in fact entered to lodge in the house, they were only put into the police-book, without having any account opened for them in the *livre du depense*.—To this it is answered, in the first place, that it seldom or never happens that the rooms of an inn, such as Godfroi's, are bespoke before-hand, although Madame Godfroi, in her oath, has been pleased to say so. 2dly, From many instances in the books, it appears, that persons who kept their rooms, on leaving the house with a view of returning, were uniformly stated in the household-book at the rate of ten sols a day, for their rooms alone, during the time of their being thus kept, though not actually possessed; so that, had the fact been as supposed by the pursuers, with regard to Mr. Wright and other such instances, these persons would still have had accounts opened for them in the household-books; at least, they would much more probably have appeared in the household-books than in the *livre de l'inspecteur*.

Under the second observation it has been shown, that instances occur of persons living for days and weeks in the hotel before any account

count is opened for them in the *livre du depense*, after which they are marked in the *livre du depense* as having entered to dinner or supper upon the day of opening the account, though in fact they had been in the hotel for a considerable time before-hand.—The only rational account that can be given of this practice is, that these persons have at first lived in a different manner from the ordinary, but afterwards have changed their minds, and agreed to eat at the *table d'hote*, and, from that time, were entered in the *livre du depense*.

From the whole of those circumstances it is plain, that besides the *livre du depense*, and the other household-books produced by Godfroi, he had other methods of accounting with his guests, viz. either a third book, for those who lived above the ordinary, or separate accounts of some kind or other.—His oath, emitted in May 1764, excluded the second book, afterwards produced by him, as much as any of his oaths exclude a third book for people charged in a different manner from the ordinary; whether he kept such book, or charged them from memory, or from detached accounts, is of no consequence to enquire:—Some instances of separate accounts are annexed in the appendix to the memorial, and the *ex facie* appearance of the *livre du depense* itself shows, that even the accounts in that book must frequently, if not always, have been taken from other materials, as many of them, though consisting of a number of articles of different dates, are one uniform transcript, wrote at one and the same time, and plainly copied from something else.—These separate accounts may possibly have been kept by the servants who waited on the different guests, and it must often have happened, that the copying into the book was omitted, as indeed there was little occasion to do it, after the guests had paid their accounts and left the inn.

In every view, it seems highly improbable that Sir John Stewart and his company should have been entered in this book, which was only kept for the ordinary of the house, supposing it to have been in other respects accurate.

10mo, As breakfast was not included in the ordinary sum of three *Observation*
livres each, and it appears that Lady Jane Douglas and Mrs. Hewit did 10th.
constantly take tea in the morning as well as tea in the afternoon; if this account 4th July had applied to them, tea would have been therein charged.—That Godfroi furnished tea, is proved by an account, of date 12th July 1750, in which there is the following article, *Pour du sucre, thé, et beure*.—It will be said, that they may have brought their tea with them; but this is not very probable, as that commodity is scarce at Reims, where they had lived for some Time, but is in great abundance at Paris.—But if so, they surely would not bring sugar along with them, as they must have known there would be no dif-

ficulty of getting sugar at any place.—And that Godfroi furnished sugar to his guests, when they had occasion for it, is clear from that article being stated in many accounts, pages 24, 36, 45.—second book, 45, 84, 90, 91, and in many other places of the book.

Bread and cream for their breakfast would in the same manner have unquestionably been found in this account, if it had applied to Sir John and Lady Jane.—These articles must have been furnished to them by Godfroi, both as they had no other method of getting them, and as he was in use to accommodate his guests with them, when called for. Instances of this are very frequent. *Vide* pages 45, 62, and many others.

The circumstance of connexion betwixt Sir John Stewart and the account 4th July, on account of butter being charged in that account, which, it is said for the pursuers, is an unusual thing in France, and seems to point at an English company, will in no shape avail the pursuers; for, in the first place, there are many more instances of butter being furnished by Godfroi to his guests than those mentioned by the pursuers, particularly Mr. Parmentier, p. 15 and 17.—Mr. de Beaupuis, p. 36.—Mr. l'Abbe de Languet, second book, p. 20.—Mr. ———, p. 45.—Mr. ———, p. 84.—Mr. Fouquet, p. 164.—Mr. Daert, p. 243.—Mr. Caré, p. 283.—Mr. Perier, p. 335; and both the detached accounts above mentioned; besides the butter supposed by the pursuers to have been furnished to the Abbe de Languet near his death.—It is remarkable too, that from the accounts above referred to, most of the butter appears to have been furnished for breakfast, whereas the butter mentioned in the account 4th July does not appear to have been for breakfast, as there are no other articles stated in the account, such as bread, cream, sugar or tea, which there would have been, had this butter been furnished to Sir John, &c. to breakfast.

Observation
11th.

11mo, It appears from these books that it was common for Godfroi's people to advance the postages of letters which were brought to his guests, and he accordingly charged them therewith in his accounts. Many instances of this are to be met with in the books, particularly in pages 65, 77, 78, 87, 110, 112, 129, 137, 158, and others.—This suggests an observation, which it is proper to have in view, with regard to the anonymous account July 1748. No charge appears in this account for the postage of letters, yet it is certain that Sir John Stewart, Lady Jane, and Mrs. Hewit, received a variety of letters while they were in Paris, some of them during the time that they are said by the pursuers to have been in Godfroi's, others of them after they left it, and two or three after they had left Paris and gone to Dammartine; all of these letters, even such of them as came after they

they had left Godfroi's, must have come to that house, and to the care of Godfroi, as is fully explained in the memorial; yet no such letters appear in the anonymous account; from whence the conclusion is plain, that Godfroi must have had a separate account of some kind or other for Sir John Stewart and his company, in which this and other articles were stated; as it is impossible to imagine that Godfroi would have omitted to charge these postages, or that he would keep a note of them on a separate paper, when he at the same time had an account for Sir John current on his books, or which was then lately closed.

In the memorial for the pursuers (part 3d, p. 100) it is said, "That ^{Observation} the blank account in July 1748, is perhaps the only account in the ^{12th.} book in which this uniform quantity of Burgundy is charged every day, over and above the stated allowance."—The meaning of this is not very intelligible. The anonymous company appear to have taken wine better in quality, but sometimes *less* in quantity (if they consisted of three persons) than the ordinary allowance; for it will be observed, that the stated allowance of the house was three bottles *per* day for three persons, whereas they sometimes took only two bottles. That they should have taken wine better in quality, is no way singular, for there are instances of this in almost every page of the book, and there are many accounts where this charge for better wine goes, from day to day, through the whole account, in the precise same manner as in the account 4th July,—such as Mr. Sprecher, p. 13,—Mr. Du Vaudier, p. 64,—and many others, which it is unnecessary to mention, as it was a common practice for persons living in Godfroi's, to take Burgundy at 24 sols, in place of the small wine allowed at the ordinary, and to be charged with the difference of the price betwixt these two wines, as in the account 4th July.

Madame Godfroi depones, "That besides her police-book, she kept ^{Observation} a household-book, the dates of which are exact, because her interest ^{13th.} requires they should be so: That when she was sick, she was examined by a commissioner of the parliament, who came to her house: ^{Purs. pr. 831, G.} That upon a plainte being read to her, she deponed what she then ^{835, C.} remembered: That at that time she did not remember the name of Mr. Stewart, which name was not wrote in her book of expence, at the epoch of the month of July; but that having since found her book ^{847, F.} *de l'inspecteur*, which she has now exhibited, in which the name is wrote with the deponent's own hand, in the said month of July 1748, she recollects perfectly, that these are the persons who lodged at her house in the month of July 1748:—That, in general, all the persons who came to lodge in her house are inserted, either by name or without a name, in her book of expence, as having entered to the "hotel,

“ hotel, whether they are only at the ordinary expence, or at an ex-
 “ pence extraordinary, and that there can be none but those who ar-
 “ rive late, and lie only one night, who may happen not to be insert-
 “ ed, because of their arriving after the deponent’s being in bed, as
 “ the deponent is in use to open an account for every person whom
 “ she sees arrive, even before she knows his name, and even in use to
 “ write down those next day, who arrived in the night-time, if they
 “ are not gone again.”

The defender insists, that Madame Godfroi has deposed falsely in the above particulars. In the first place, from the excerpts prefixed, it appears that the dates in her household-book are often wrong, and she has sworn to the accuracy of this household-book, with the sole view of having it believed, that the account 4th July must apply to Sir John Stewart.—2dly, When she was first questioned about the affair, it appears from evidence in process, and is consistent with the knowledge of the pursuers, that she did not pretend to remember any one of the many circumstances since deposed to by her ; on the contrary, she appeared to be quite ignorant of the whole affair.—But no sooner was she recovered from the indisposition she then laboured under, than her husband, at a time when she had neither her police-book, which was then fallen by, nor even her household-book, which was in the Tour-nelle, prevailed on her to remember what she had before sworn she knew nothing about, so that she had none of the aids mentioned in the pursuers memorial, to help her to the recollection of Sir John and Lady Jane.—This fact is known to the pursuers, and is even proved by Mr. Stuart’s journal produced by him, page 1112.—As little is it true, that she is in use to open accounts in her household-book, in the manner above set forth by her, many of the articles in the police-book which have no corresponding accounts in the household-book, are of her handwriting, so that the persons could not have arrived after she was in bed, or if they did, she could have as easily entered them in the household-book as in the police-book.—Others of them are of the handwriting of the inspector of police, and have been inserted in the police-book, when, in the course of the day, he visited the inn, and was told that such persons were then living in the house.

And Godfroi’s assertion, that his books of expence contain the real dates of the entry of all the persons who lodged in his house without omission, on account of his interest, is equally false.—From the excerpts prefixed, it has been shown, that these books neither contain the true dates of the entries of persons to his house, nor any entries at all for many persons who certainly lodged in his house, as is proved by the *livre d’inspecteur*.

As to what is said in the memorial, p. 109, that the defender might have discovered persons who lodged in Godfroi’s, without an account being

being opened for them, and thereby shown the irregularity of the book ;——it is to be observed, 1mo, That, in a very few days after those on the part of the defender had arrived in France, the book was locked up in the Tournelle, so that it could neither be seen, nor the nature of it considered by them. 2do, The pursuers, in their papers and pleadings, laid the weight of the *alibi* on Michelle's. 3tio, As soon as it was imagined any weight was to be laid on the household-book of Godfroi, the defender made repeated applications, both by word and writing, for communication of that book, or a copy of it, in order to make enquiries, all which was refused till after the expiry of the commission for taking the proof ; and the offer *then* made by the pursuers, to remain longer in France, could not be agreed to by the defender's agent, both as the commission was at an end, and because he apprehended the pursuers to be answerable for having unjustly deprived the defender of the means of making the proper enquiries, when they ought to have been made, and when they would have been attended with no expence, whereas, to have staid longer in France for this single purpose, would have been attended with much expence and inconvenience.

During two years and an half, viz. from January 1763 to July 1765, that the defender's agents were in France, making enquiries, and taking proofs as to other matters, they might have discovered the very persons to whom the account 4th July in Godfroi's book applied, had they been furnished with any data or rule by which such enquiry could be made, and had they imagined it was necessary ;——but no lights of any kind were given them.——Even the police-book of Godfroi was kept up from them, for they had been told in the beginning, that this book had fallen by ; and the first time they had any information of its being recovered, was in May 1765, a few days before Godfroi's wife produced it at her examination, though it appeared from her oath, that she had found this book a year and a half before. After the proof was closed, and inspection of the other books obtained in July 1765, the defender's agent would have been much to blame, had he delayed the cause, perhaps for two years longer, making a search through all France for the companies which had lodged in Godfroi's hotel.

The pursuers endeavour to apologize for this conduct, by saying, that they themselves had not taken their ground till very late in the cause ; and they give sundry reasons for having at first been induced to believe, that Michelle's and not Godfroi's was the place of the *alibi* ; the chief of which seems to be, that, prior to the commencement of the action, they were informed of Sir John Stewart's note to Mrs. Napier, and great weight is laid on this note in sundry parts of the memorial.

memorial.—With regard to this, the evidence in process shows very clearly, that Mr. Stuart was ignorant of the note to Mrs. Napier at the time of raising the process, as it is inconceivable that no notice should have been taken of a circumstance, which appeared to him to be so material, either in the first plaint, or in the memorials to his lawyers in November and December 1762, had he known of it. And indeed it is plain from his letter to Mr. Baron Mure, 20th January 1763, that he had then only recently come to the knowledge of it. In this letter he says, “To compleat the whole, there remains yet one point of material evidence, the arriving at which depends greatly upon you.—*I have learned*, that, so far back as the year 1756, Sir James Stewart wrote a letter to a very worthy man here, Mr. Gordon, principal of the Scots college, &c.”—The whole reasons, in short, which are given in the memorial, for having originally preferred the *alibi* in Michelle’s to that in Godfroi’s, are so many proofs that they themselves considered the evidence of Godfroi and his books to be of no importance, and that they were only at last driven to rest their cause upon this proof, because they could no longer hold by the evidence, which they had till then considered as undoubted, of an *alibi* in the house of Michelle’s.

ILAY CAMPBELL.



